

**CALIFORNIA COASTAL COMMISSION**

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February 4, 2004

TO: Commissioners and Interested Parties

FROM: Charles Lester, Deputy District Director  
Diane Landry, District Manager  
Mike Watson, Coastal Planner

SUBJECT: **City of Carmel-by-the-Sea: Implementation Plan Re-submittal.** For public hearing and Commission action at its meeting of February 20, 2004 to be held in La Jolla at the Lodge at Torrey Pines, 11480 North Torrey Pines Road, La Jolla, CA 92037.

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## SYNOPSIS

### Description of Submittal

This is the Executive Director's Staff Report and Recommendation on the City of Carmel-by-the-Sea Local Coastal Program (LCP) Implementation Plan (IP). This is the second re-submittal of the Implementation plan. The current submittal is an entirely new compilation of the City's Municipal Code Ordinances developed over the past few years and consisting of 32 Chapters and 8 Appendices. It was submitted on September 25, 2003, but was not filed until January 2, 2004 after all requisite supporting documentation was received. Coastal staff has worked closely with the staff of the City on issues raised by the submittal and has narrowed the scope of unresolved items to just a few. The standard of review for the Implementation Plan is the City's certified Land Use Plan approved by the Commission on March 6, 2003.

### Summary of Staff Recommendation

Staff recommends that the Commission hold a public hearing and take the following actions for the City of Carmel-by-the-Sea Implementation Plan: staff recommends denial of the Implementation Plan as re-submitted; staff further recommends approval of the IP if the re-submittal is modified. The City has six months to accept the modifications from the time of action or the re-submittal stands denied.

The recommendation for denial of the IP is based on inconsistencies and/or inadequacies of the re-submittal to carry out the intent of the certified Land Use Plan particularly as they relate to preservation of historic resources, polluted runoff and water quality issues, shoreline management, providing for public access and recreation, and other coastal resource related issues. The recommendation for certification of the IP contains Recommended Modifications to address each of the noted deficiencies as discussed in the chapters below.



California Coastal Commission

Meetings between Commission and City staff have resulted in the provisional acceptance the majority of modifications. The City has agreed to all but a few of the Modifications including those involving the shoreline management and maintenance plan, the definitions of demolition and rebuild, and tree worksheet evaluation.

### **Summary of Issues**

#### **Community Character / Historic Preservation**

The submitted IP contains numerous standards and ordinances designed to ensure that Carmel's unique community character is retained. In particular, the IP includes strong residential and commercial design review standards and the newly created historic preservation element. Nonetheless, the IP is missing certain requirements that are needed to effectively implement LUP policies, particularly concerning the protection of historic resources. Therefore, staff recommends that modifications be adopted to bring the IP into conformance with the certified land use plan. Modifications include clarifying standards to assure that historic resources are not demolished or otherwise altered in a way to adversely impact their historic character. In addition, modifications are needed to assure that the Historic Resources Board is involved in all aspects of administering the Historic Preservation Program. Modifications also create a Conservation District within the Commercial Core of the downtown to preserve the design context of the many historic buildings residing in this area and require consistency with the Secretary of Interior standard for any changes to historic resources within the City. Finally, a modification is required that formally adopts the results of the City's Historic Resources Survey identifying historic resources within the City.

#### **Base Zoning and Overlay Plan Districts**

A large part of the submitted IP is devoted to establishing the base zoning and overlay plan district rules and ordinances. These include the standards and regulations for site development and building standards, design guidelines and land use regulations. It covers development in the residential and commercial districts as well as project proposals in the beach, park, and community plan district overlays. Though the submitted ordinance is fairly comprehensive, staff has identified modifications that are necessary to bring the document into conformance with the certified LUP. As submitted, the Implementation Plan is inadequate to carry out the intent of the City's land use plan.

In particular, staff has recommended modifications on establishing limits on site coverage, and the requirements for coastal development permit review. There are modifications to the established general regulations, design review rules, and the standards /limits on development within the City's residential and commercial base zoning and overlay districts. Other specific recommendations apply to the beach overlay district and public access rules along the City's beach. Staff has recommended modifications requiring additional parking on privately developed lots fronting Carmel Beach, expanding the beach overlay district to be coterminous with the Commission appeal jurisdiction. These are needed to alleviate any parking conflicts along Scenic Road and to ensure consistency in processing appealable permits within the beach overlay district. As modified, the Implementation Plan is consistent with and adequate to implement the policies of the certified land use plan.



### **General Provisions Applying in All Districts**

This sections includes general provisions and rules that apply in all districts including standards for landscaping, non-conforming uses and buildings, off-street parking, signs, subdivision and lot-line adjustments, storm water quality, telecommunications, trees and shrubs, and water management. With the exception of the storm water quality element, the various chapters required only minor changes to bring them into conformance with the certified LUP. A minor modification is recommended to the chapter on Lot-line Adjustments that prohibits lot-line adjustments or subdivision of illegal lots, and requires a complete chain of title or other evidence prior to subdivision of legal lots. Staff also recommends a minor modification to the City's landscape chapter prohibiting the use of invasive, non-native plants, and another modification prohibiting the placement of a "No Trespassing" sign within 20 feet of a public access or recreational area. The most significant modification is to the City's Storm Water Utility Ordinance. Commission staff reviewed the submitted element and determined that it was inadequate to implement the certified land use plan. After consultation with City staff, a new storm water element was drafted and included as a new chapter to the Implementation Plan submittal. The new element contains recommendations designed to avoid and/or minimize the introduction of polluted runoff into coastal waters. It includes site design, source control, and treatment control measures and best management practices aimed reducing pollutant loads associated with residential and commercial development. The modification will help the City attain its water quality goals and is adequate to carryout the intent of certified LUP.

### **Process and Authorities**

This section deals with permit procedures, appeals, restricted uses, design review, environmental review, amendments, findings, and enforcement. As submitted, the IP document needed significant modification particularly with respect to permit procedures and appeals. The modifications were necessary to establish the process for review of development within the coastal zone and to ensure that the development is consistent with the Local Coastal Program and the Coastal Act. Modifications were also necessary to identify which development is subject to CDP review and those that are subject to review by the City or the Commission. Another modification was required to identify the categories of development, which are exempted from the coastal development permit process pursuant to section 30610 of the Coastal Act.

With respect to appeals, several minor modifications were needed, including a change that establishes the grounds for appeal of any development and limits them to an allegation that the approved project does not conform to the certified LCP or the public access policies of the Coastal Act.

### **General Terms and Definitions**

The final chapter of the submitted IP is the list of terms and definitions. Staff is making a few recommended modifications to this section, including adding the terms "coastal plan," "ESHA," and "feasible." In addition, staff is recommending modifications to the definitions of "site coverage," "rebuild," and "demolition." The change to site coverage is necessary to eliminate decomposed granite from the list of materials that are truly permeable. The recommended



modification to the demolition definition is necessary to bring the definition into conformance with the past Commission practice and to assure the protection of community character, consistent with the LUP. The City's submittal defines demolition as the complete removal of a structure or dwelling. Prior to this change, the City and Commission have been operating under a categorical exclusion order (E-77-13) which at that time that it was approved, defined demolition as the removal of 50% or more of the exterior, structural elements, roof, or foundation of an existing building or dwelling. Weakening of this standard could have broad ranging effects on historic and non-historic buildings alike.

### **Other Issues**

Two other issue areas of note are the Shoreline Management Plan (Appendix A) and the City's Tree Evaluation Worksheet (Appendix B). Staff recommended modifications in the Implementation Plan appendices as necessary to require coastal development permits for development along the shoreline, strengthen the application requirements for CDPs, and establish jurisdiction over development at the base of the bluff and on the beach. Staff also suggested modifications to Appendix B to lower the requirement for establishing tree significance. As so modified, the Implementation Plan is consistent with and adequate to carryout the intent of the certified LUP.

### **Public Participation Summary**

The noted issues and others of more local concern were debated in many public forums. The City has provided a detailed summary of public participation available for review at the Commission offices. As described, the Implementation Plan is a compilation of the City's municipal code ordinances and other standards required to effectuate the certified Land Use Plan. There have been numerous opportunities to debate these issues at the City, although staff has received written correspondence requesting that the Commission hearing to be postponed to March 2004 in Monterey. See attached Exhibit 1.

### **Additional Information**

For further information on the Implementation Plan or the staff report, contact Mike Watson at (831) 427-4863. Correspondence should be sent to the Central Coast District Office at 725 Front Street, Suite 300, Santa Cruz, CA 95060.

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## Exhibits

Exhibit 1: Written Correspondence re: Implementation Plan

## I. STAFF RECOMMENDATION: MOTIONS AND RESOLUTIONS

Staff recommends adoption of the following resolutions:

### RESOLUTION I. (RESOLUTION TO DENY CERTIFICATION OF THE IMPLEMENTATION PROGRAM AS SUBMITTED)

**MOTION I:** *I move that the Commission reject the Implementation Program for the City of Carmel-by-the-Sea as submitted.*

#### STAFF RECOMMENDATION OF REJECTION:

*Staff recommends a **YES** vote. Passage of this motion will result in rejection of Implementation Program and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.*

#### RESOLUTION TO DENY CERTIFICATION OF THE IMPLEMENTATION PROGRAM AS SUBMITTED:

*The Commission hereby denies certification of the Implementation Program submitted for the City of Carmel-by-the-Sea and adopts the findings set forth below on grounds that the Implementation Program as submitted does not meet the requirements of and is not in conformity with the policies of Chapter 3 of the Coastal Act. Certification of the Implementation Program would not meet the requirements of the California Environmental Quality Act as there are feasible alternatives and mitigation measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the Implementation Program as submitted.*

### RESOLUTION II. (RESOLUTION TO CERTIFY THE IMPLEMENTATION PROGRAM WITH SUGGESTED MODIFICATIONS)



**MOTION II:** *I move that the Commission certify the Implementation Program for the City of Carmel-by-the-Sea if it is modified as suggested in this staff report.*

**STAFF RECOMMENDATION:**

*Staff recommends a **YES** vote. Passage of this motion will result in certification of the Implementation Program with suggested modifications and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.*

**RESOLUTION TO CERTIFY THE IMPLEMENTATION PROGRAM WITH SUGGESTED MODIFICATIONS:**

*The Commission hereby certifies the Implementation Program for the City of Carmel-by-the-Sea if modified as suggested and adopts the findings set forth below on grounds that the Implementation Program with the suggested modifications will meet the requirements of and be in conformity with the policies of Chapter 3 of the Coastal Act. Certification of the Implementation Program if modified as suggested complies with the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Program on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment.*

## **II. SUGGESTED MODIFICATIONS**

The Commission suggests that the following changes to the submitted City of Carmel-by-the-Sea Implementation Plan are necessary to make the requisite findings. If the local government accepts the suggested modifications within six months of Commission action, by formal resolution of the City Council, the Implementation Plan will become effective upon Commission concurrence with the Executive Director finding that this has been properly accomplished.

### **CHAPTER 17.2: Title Components, Zoning Districts, General Rules**

**Modification #1. Revise Section 17.2.6 as follows:**

An application for any permit, license, or approval submitted pursuant to this title shall not be accepted as complete for processing unless it is consistent with the land use designation described in the General Plan and the Coastal Land Use Plan. However, the concurrent filing of a permit or license with a General Plan/Land Use Plan amendment



application and/or and amendment to the Zoning Code/Implementation Plan shall be allowed. In such cases, the permit or license application(s) shall be considered incomplete for purposes of implementing the Permit Streamlining Act until final action has been taken on the amendment(s) to the General Plan / Land Use Plan / Zoning Ordinance / Implementation Plan. However, the concurrent filing of a General Plan amendment application with an amendment to the zoning district or he provisions of this title shall be allowed. In any case, where there is a conflict between this title and the General Plan and Coastal Land Use Plan, the General Plan and the Coastal Land Use Plan shall prevail.

**Modification #2. Revise Section 17.2.9 A as follows:**

Except as otherwise provided herein and by applicable State or Federal law, the regulations of this title and requirements and conditions imposed pursuant to this title shall not supersede any all other regulations or requirements adopted or imposed by the City of Carmel by the Sea City Council, any board, commission, or department of the City of Carmel by the Sea, or any other local, state, or federal agency that has jurisdiction by law over uses and development authorized by this title. All uses authorized by this title shall comply with all other such regulations and requirements. Where two or more ordinances regulate the same use or activity, the more restrictive ordinance shall apply. In the event of a conflict between the regulations of this title and any other regulations or requirements adopted or imposed by the City of Carmel by the Sea or by any of the boards, commissions or departments, the regulations imposed pursuant to this title shall take precedence. In the event of a conflict between the regulations of this Title and the General Plan/Land Use Plan, the latter shall take precedence.

**Modification #3. Revise Section 17.2.10 as follows:**

Any building or structure for which a Coastal Development Permit and a Building Permit have ~~has~~ been issued prior to the effective date of this title, or any amendment to this title, may be completed and used in accordance with the plans, specifications, conditions and other permits on which said Coastal Development Permit and Building Permit was were granted, as long as the Coastal Development Permit has not expired before construction has begun and construction is commenced within one (1) year after issuance of the Building Permit and diligently pursued to completion as determined by the Building Official. No extensions of time shall be granted for commencement of construction if any provision of this title has been amended so as to make the building, structure or permits non-conforming to the provisions of this title.

**CHAPTER 17.10: R-1 District Design Regulation**

**Modification #4. Revise Section 17.10.2 E as follows:**

Certificates of Compliance. Any person owning real property or vendee pursuant to a contract of sale of real property may request, and a local agency shall determine, whether the real property complies with all applicable City ordinances and the Subdivision Map Act regarding the formation of legal lots. Upon finding that a parcel complies with the requirements for a legal lot under the Subdivision map Act and local ordinances adopted





pursuant to formation of legal lots, the Department of Community Planning and Building shall issue for recordation a certificate of compliance. If the Department determines that the property does not comply with applicable State and City requirements. The Director may impose any conditions that would have been applicable to the division of the property at the time the applicant acquired his or her interest. Upon making a determination of non-compliance and establishing conditions, the City shall cause a conditional certificate of compliance to be filed for recordation with the County recorder. In addition, the lot configuration described in the conditional certificate of compliance shall be subject to the coastal development permit requirements of section 17.52 of this LCP. Furthermore, any lot configuration described in a [unconditional] certificate of compliance shall be subject to the CDP requirements of the LCP (Section 17.52) if the division of land that created that configuration occurred subsequent to January 1, 1977 or February 1, 1973 in the case of a division subject to Prop. 20). Compliance with these conditions shall be required prior to City action on any permit for development of the parcel except as otherwise provided in this Section.

**Modification #5. Revise Section 17.10.3.B.2 and 17.10.3.B.2(a)ii) as follows:**

**Maximum Site Coverage.** ~~10 percent of the site area. At least 50 percent of all site coverage shall be permeable or semi-permeable. Impermeable site coverage, as defined in section 17.70, shall be limited to a maximum of 22% of the base floor area allowed for the site (Note: on a 4,000 sq. ft. site this equals 396 sq. ft. or 10% of the site).~~

a. Exemptions.

ii. ~~Driveways and Walkways. A single driveway up to 9 feet in width and a single walkway up to 4 feet in width, the combined area of which do not exceed 500 square feet, are exempt from site coverage limits if made of semi-permeable or full permeable materials. Such walkways shall connect the home entrance with either the driveway or a front or side property line facing a street. Front walkways shall not be permitted to encroach into the right-of-way and shall either connect with the driveway on site or shall stop at the property line, as shown in Figure II-4.~~ **Additional Site Coverage for Driveways.** If at least 50% of all site coverage on the property is made of permeable or semi-permeable materials, an additional amount of site coverage of up to 4% of the site area may be allowed for use in a single driveway of up to nine feet (9') in width. Driveway paving materials may encroach into unimproved rights-of-way between the property line and the street.

**Modification #6. Add Section 17.10.8 as follows:**

**17.10.8 Additional Use Regulations**

Development, as defined in section 17.70 of the LCP, shall not interfere with the public's right of access to the sea by eliminating free public beach parking along San Antonio Avenue between 2<sup>nd</sup> Avenue and Santa Lucia or along any street rights of way west of San Antonio.



**Modification #7. Revise Section 17.14.11 as follows:**

To assist in the design and review process, the City Council has adopted Commercial Design Guidelines. Proposed projects need not strictly comply with every guideline to be approved but deviations should be minor and reasonably related to good design principles and site conditions. When a proposed project involves construction of a new building or the replacement, significant enlargement, or modification of an existing building, applicants are encouraged, first, to consult the Design Guidelines and then to prepare and submit conceptual or preliminary drawings for review by the Design Review Board or Planning Commission. This preliminary review can promote communication between project applicants and the City's staff and decision-makers, facilitating an understanding of applicable design regulations and avoiding unnecessary expenditures in detailed plans. Development of single family residences in the RC district shall be consistent with the standards and criteria identified in Chapter 17.10: R-1 District Design Regulations.

**CHAPTER 17.20: Overlay Districts****Modification #8. Revise Section 17.20.14: Boundaries of the Beach Overlay District as follows:****Beach and Riparian Overlay District**

This The Beach and Riparian Overlay district shall be coterminous with the California Coastal Commission's coastal development permit appeal jurisdiction and shall include all public and private property, wholly or in part, within the boundaries of the appeal jurisdiction identified in section 17.54.2 A & B of this Chapter. ~~apply to the entire area from the mean high tide eastward to the limit of all private property fronting on either side of the first public road inland from the beach. The specific boundaries of the Beach and Riparian Overlay district are shown schematically on Figures III-11 and III-12. [REVISE AS NEEDED] A definitive listing of all affected private property is included with each figure. [REVISE AS NEEDED] All public property within the boundary described above is also included within the district.~~

**Modification #9. Revise Section 17.20.15: Coastal Development Permit Required as follows:**

Unless exempted by Section 17.52.6: Development Excluded from Coastal Permit Requirements, all new construction, additions, design alterations or changes in land use in the Beach Overlay District development, as defined by 17.70, shall require a use permit ~~which shall constitute a Coastal Development Permit~~, in addition to any other permits(s) required by law. Development undertaken pursuant to such a permit shall conform to the plans, specifications, terms, and conditions approved in granting the permit. Notice, hearing and appeal procedures shall be established in Chapter 17.52: Permit Procedures and Chapter 17.54: Appeals of this Title.

**Modification #10. Revise Section 17.20.16: Permit Standards as follows:**

The following standards shall be used by the ~~Planning Commission~~ decision making bodies in approving or denying a Coastal Development Permit in the Beach and Riparian Overlay District. In the list below, items A, B, C, E, I, J, K and P apply to all properties in the Overlay District and items D, F, G, H, L, M, N, O, Q and R apply to only those properties west of Carmelo or North San Antonio Avenue. No building permit for any development, as defined in section 17.70, including but not limited to new construction, additions, exterior alterations or change in land use shall be approved unless a Coastal Development Permit is approved taking into consideration all of the following as may be appropriate to the scope of the project:

**B. Location.** All ~~proposed construction~~ development shall be located and designed to avoid conflict with recreational use of any adjacent public property or conflict with coastal resources.

**C. Design Compatibility.** All ~~proposed construction~~ development shall be compatible in design with existing buildings in the area for the purpose of protecting the neighborhood character and consistent with the R-1 design guidelines established in 17.10 with the exception of specific standards called out in 17.20 herein.

**D. Access.** Development shall not interfere with the public's right of access to the sea. Potential public right of access shall be reviewed on the property and, where, appropriate, made a condition in the permit.

**K. Drainage.** A drainage system shall be provided for ~~the project~~ all new development to prevent undue erosion, ~~and excess water running from the site onto the beach or endangering coastal protective structures or coastal access structures as determined by the Building Official~~ minimize runoff, infiltrate and filter stormwater prior to conveyance off-site.

**M. Prohibition on Private Development Needing Protection.** ~~Proposed New development of private property~~ shall not be approved where ~~the City determines geologic evidence concludes~~ that shoreline protective structures will be necessary to protect the new structures at the time of development, or within 100 years of development.

**O.2 Use of Bluff Retreat Setbacks.** No development except public access pathways, public restrooms, stairways and associated public recreational or infrastructure facilities shall be permitted within the bluff retreat setbacks identified in site-specific geologic reports.

**R. Parking.** On sites of 6,000 square feet or greater, two on-site parking spaces per primary dwelling unit shall be provided for all new residential development in the Beach and Riparian Overlay District. One of these spaces may be established as an



uncovered tandem space within the front or sideyard setback located on the driveway in front of a garage or carport or elsewhere on the property where parking is allowed by the underlying zoning district.

**Modification #11. Revise Section 17.20.17: Application Content as follows:**

**A. Erosion Control Plan.** All development permit applications involving substantial alterations to existing buildings or site design, or construction of new buildings on ocean-fronting parcels shall include a site-specific erosion control plan. The plan shall be prepared by a registered engineer qualified in hydrology and soil mechanics, and shall ensure that the development will not contribute to the erosion or failure of any bluff face, and will eliminate or mitigate any adverse impacts on local shoreline sand supply to the maximum extent feasible. New development that (1) increases site coverage by more than 2% of the site area or (2) involves grading that will affect drainage patterns on or off-site or (3) involves either a rebuild or construction of a new building or shoreline structure shall include a site specific erosion control plan that includes controls on grading (i.e, timing and amounts), best management practices for staging, storage, and disposal of construction materials, design specifications of sedimentation basins, and landscaping / re-vegetation of graded or disturbed areas. New development shall further include a site-specific polluted runoff control plan that demonstrates how runoff will be diverted from impermeable surfaces onto permeable areas of the property in a non-erosive manner to filter and infiltrate stormwater prior to conveyance offsite.

**Modification #12. Revise Section 17.20.18 A: Protection of Existing Coastal Access as follows:**

**A. Protection of Existing Coastal Access.** Development may not interfere with public rights of access to the sea where the rights were acquired through use or legislative authorization. Public access rights may include but are not limited to the use of dry sand and rocky beaches to the first line of terrestrial vegetation. Development shall not interfere with the public's right of access to the sea by eliminating free public beach parking along Scenic Road, the Del Mar parking lot, and San Antonio Avenue from 2<sup>nd</sup> Avenue to Santa Lucia Avenue, or any street right of ways west of San Antonio.

**13. Revise Section 17.20.19: Shoreline Protection as follows:**

**B. Drainage Devices.** New drainage devices extending over the bluff face shall not be permitted. Repair and maintenance shall be allowed for existing devices serving existing facilities. Construction of new dwellings and rebuilds of existing dwellings shall require abatement of existing private drainage devices that extend over the bluff face and all excess drainage shall be diverted from impermeable surfaces onto permeable areas of the property in a non-erosive manner to filter and infiltrate storm water prior to conveyance to the City's Municipal drainage facilities. ~~if the property can be drained away from the bluff face. All new drainage structures shall be constructed so that drainage water will not spill over or onto the bluff face. Drain pipes shall be allowed only where no less environmentally damaging drain system is feasible, and drain pipes are designed and placed to minimize impacts to the bluff face, toe of bluff, and beach.~~



**C. Shoreline Protective Structures.** Shoreline protective structures ~~limited to sea walls, engineered revetments,~~ may be allowed ~~with Coastal development permitted~~ approval, only when the review authority determines that the structure is:

5. Designed to ~~preserve lateral~~ avoid or minimize, if avoidance is infeasible, impacts on beach access, where feasible;

**Modification #14. Revise Section 17.20.22 D.2: Report Contents as follows:**

The biological resources report shall:

a. Prepare a biological survey of the site that includes identification of sensitive resources, the habitat values, and the location of sensitive resources. The report shall also evaluate the impact that existing and proposed development may have on the habitat, including whether the existing and proposed development will result in a significant disruption of habitat values. The report shall identify feasible alternatives to avoid disrupting the habitat values. If avoidance is not possible, mitigation measures shall be identified that protect the resource from disturbance or degradation, if such mitigation measures exist, and a program for monitoring and evaluating the effectiveness of the mitigation measures.

**Modification #15. Revise Section 17.20.22 E: General Development Standards as follows:**

1. *Performance Standards.* All development adjacent to or within an ESHA shall comply with the following requirements.

a. New development shall be designed, sited, constructed, and maintained so as to ~~not significantly avoid or minimize, if avoidance is not feasible,~~ disruption of the habitat values in the ESHA.

**Modification #16. Add the following text on Page III-5 under heading CHAPTER 17.20 OVERLAY DISTRICTS:**

Article VII: Downtown Conservation District

**Modification #17. Add the following text on page III-43:**

Article VII: Downtown Conservation District

**Sections:**

**17.20.26 Purpose.**

**17.20.27 Boundaries of Downtown Conservation District**

**17.20.28 Procedures and Criteria for Review**



**17.20.26 Purpose**

The City recognizes that Ocean Avenue and the commercial properties that surround this corridor contain some of the most memorable and important commercial buildings in Carmel. The design character and ambience created by these buildings are an essential part of the Carmel experience and critically important to the economy of the City. This area also has one of the highest concentrations of historic buildings in the City. The purpose of the Downtown Conservation District is to protect the historic resources and the general design context that surrounds them and to implement the following General Plan/Local Coastal Land Use Plan policies:

- A. Recognize the qualities and attributes that make up the unique architectural character of Carmel. Retain these qualities in existing buildings and encourage the use of them in new structures. (LUP Goal G1-3)
- B. Protect the special and unique character of Ocean Avenue and the surrounding commercial area. Ensure, through the administration of land use and design regulations, that the architecture, landscape, scale and ambience of this area are maintained. (LUP Policy P1-63)
- C. Retain the scale and variety of design established in the retail core when considering changes to buildings that are not historic. Protect, preserve and rehabilitate historic commercial architecture that represents the character, ambience and established design context of the commercial area. (LUP policy P1-66)

**17.20.27 Boundaries of the Downtown Conservation District.**

The boundaries of the Downtown Conservation District are shown on Figure III-13. A definitive listing of all affected properties is included with Figure III-13.

**17.20.28 Procedures and Criteria for Review.**

The following procedures shall apply to all applications for demolitions, rebuilds, exterior alterations and additions to building sites located in the Downtown Conservation District.

- A. **Historic Resources.** Projects affecting any historic resource shall require approval by the Historic Preservation Board consistent with Chapter 17.32. In its review, the Board shall apply the Secretary of Interior's Standards and shall adopt the following findings:



1. The historic character of the property will be retained and preserved. Distinctive materials, features, spaces, and spatial relationships that characterize the property will be preserved.
2. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize the property will be preserved.
3. The new work shall be subtly differentiated from the old and will be compatible with the historic materials, features, size, scale, and proportion and massing to protect the integrity of the property and its environment.
4. The proposed development is consistent with the established design context of the Conservation District and will not adversely affect any historic resources on the project site or on adjacent sites.

Following action by the Historic Resources Board, the project shall then be scheduled for final review by the Planning Commission or Design Review Board consistent with Chapter 17.58.

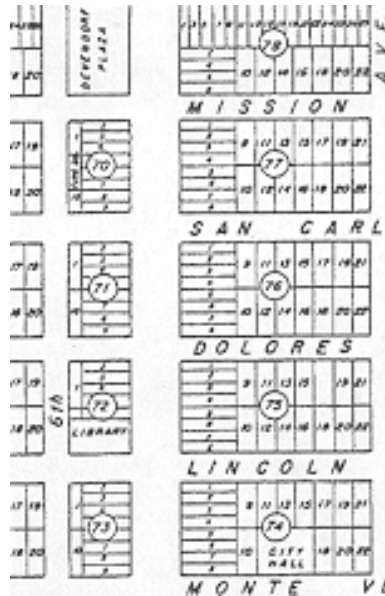
**B. Non-Historic Properties.** Projects affecting properties determined not to be historic shall require a review and recommendation from the Historic Preservation Board prior to review and final action by the Planning Commission, Design Review Board or the Planning Director. The purpose of this review shall be limited to advising the decision-making body on (1) the project's consistency with the established design context of Ocean Avenue and the surrounding commercial area and (2) identifying any potential impacts on nearby historic resources. The following findings shall be used by the Board in making its recommendations:

1. All proposed new development shall not exceed the greater of the base floor area ratio requirements identified in section 17.14.14 or the existing floor area of the site.
2. The proposed development is consistent with the established design context of the Conservation District and will not adversely affect any historic resources on the project site or on adjacent sites.

Figure III-13 Downtown Conservation District

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Downtown Conservation District: Those building sites that include all or portions of the following lots:

<u>Block</u>	<u>Lots</u>
54	17 - 20
55	19 - 22
56	19 - 22
57	17 - 20
58	18, 20, 25, 26
70	All lots
71	All lots
72	All lots
73	All lots
74	All lots
75	All lots
76	All lots
77	All lots
78	All lots (street frontages only)

## CHAPTER 17.22: Community Plan Districts

### **Modification #18. Revise Section 17.22.6 Status of Community Plans as follows:**

~~A. A community Plan (CP) shall be effective on the same date as the ordinance creating the CP district. The City Council may impose dates and terms upon which a Community Plan (CP) will expire, although establishment of expiration dates and terms is not required. Expiration of a Community Plan (CP) voids the CP district and causes the property to revert to the zoning map designation preceding the amendment to the CP district or to a zoning designation approved by the City Council, consistent with the General Plan land use designation for the plan area. After City Council adoption of a Community Plan or Specific Plan, an amendment to the City's certified Local Coastal Program shall be submitted to the California Coastal Commission pursuant to Public Resource Code Section 30515. The City may submit a proposed amendment either as an amendment that will take effect automatically upon Coastal Commission approval, or as an amendment that will require formal City Council adoption after Coastal Commission approval.~~

## CHAPTER 17.30: Demolitions

### **Modification #19. Revise Section 17.30.1 Demolition of Structures as follows:**

Chapter 17.30 Demolition of Structures Buildings

Sections:





17.30.1 Demolition of ~~Structures~~ Buildings.

## 17.30.2 Conversion or Demolition of Affordable Housing.

17.30.1 Demolition or Rebuilding of ~~Structures~~ Buildings.

Except when required for the emergency protection of public health or safety as determined by the City Administrator in consultation with the Building Official, no permit authorizing the demolition or rebuilding of any ~~structure or~~ building within any district shall be issued until reviewed by the Planning Commission or Design Review Board in accordance with the findings established in Section 17.64.7: *Demolition and Conversion of Residential Structures* (if applicable). No permit for Demolition or Rebuilding shall be approved without the concurrent review and approval of replacement construction for the site. If the structure or site is identified as an historic resource in the ~~Carmel Inventory~~, the demolition is prohibited except when approved by the Historic Resources Board and the Planning Commission consistent with the findings established in section 17.64.5. ~~shall be the decision making body for the demolition permit and for All~~ related land use, design review and environmental review approvals and the processes established in Chapter 17.32: Historic Preservation, also shall be followed. The demolition, rebuilding or relocation of any structure shall require a coastal development permit.

**Modification #20. Add the following section to Chapter 17.30:**

**17.30.3 Minimum Standards.** Applications for demolition of any structure(s) that would cause there to be two (2) or more potential building sites, shall include submittal of substantial evidence (e.g., a review of City records, parcel-related documents filed at the Monterey County Recorder's office, chain of title documents, etc.) demonstrating the existence of two (2) or more legal lots of record that will meet City standards for building sites. Applications that proposed the merger of all underlying lots are exempt from this requirement.

**CHAPTER 17.32: Historic Preservation****Modification #21. Revise Section 17.32.1 Purpose as follows:**

The purpose of the historic preservation ordinance is to establish standards, procedures and regulations to promote identification, ~~and preservation,~~ and enhancement of historic resources including buildings, structures, objects, sites, districts and archaeological resources that represent the unique architectural, cultural, historic and prehistoric identity of Carmel-by-the-Sea, by:

- A. Establishing a Historic Resources Board with powers and duties to administer the City's Historic Preservation Program.
- B. Maintaining an inventory of historic resources.



- C. Identifying and protecting archaeological resources.
- D. Protecting the design character and context of the residential and commercial areas by maintenance of an appropriate setting for historic resources.
- E. Participating in Federal and State preservation processes and programs.
- F. Becoming a certified local government.
- G. Incorporating historic preservation principles into the City's project review process, consistent with State and Federal standards, criteria, and practices.
- H. Avoiding and minimizing potential impacts on historic resources when developing and enforcing land use, design review, zoning, fire code, environmental review and other City regulations.
- I. Pursuing and supporting the use of appropriate capital, Federal, State and local private grants, loans, tax credits and tax relief.
- J. Providing financial, technical and legal assistance programs to encourage and assist with rehabilitation and maintenance of historic resources.

**Modification #22 Revise Section 17.32.2.B.4 Historic Resources Board as follows:**

- 4. If professional members with the required expertise cannot be found, the City Council may substitute one or more additional public members with a demonstrated interest ing historic preservation.

**Modification #23 Revise Section 17.32.3 Duties and Powers of the Historic Resources Board as follows:**

The Historic Resources Board, established in accordance with the provisions in Title 2.24, shall have the following duties, powers and responsibilities:

- A. To administer the Historic Preservation Program pursuant to Title 17, Chapter 32.
- B. To review, and approve, deny or approve with conditions, Determinations of Consistency with the Secretary of Interior's Standards for all major alterations involving historic resources.
- C. To administer the Carmel Inventory and Register.



- D. To approve or deny requests submitted by owners of identified historic resources to ~~designate historic resources and thereby~~ place the resources on the Carmel Register.
- E. To approve or deny requests to remove resources from the Carmel Inventory and/or the Carmel Register.
- F. To advise the Planning Commission and the City Council on amendments to the Historic Context Statement, Historic Preservation Ordinance and the provisions of the General Plan related to historic resources.
- G. To advise the Planning Commission and the City Council on the establishment of Historic Districts.
- H. To advise the City Council on becoming a Certified Local Government for purposes of Historic Preservation.
- I. To advise the Planning Commission on the adequacy of environmental documents involving potential impacts to identified historic resources.
- J. To advise the City Council on proposed Mills Act contracts and proposed tax credit applications.
- K. To hear appeals of actions by Staff to approve or deny Determinations of Consistency for minor alterations and/or Track One projects affecting historic resources.
- L. To hear appeals of any administrative determination that a property is not eligible for the Carmel Inventory and to reverse where necessary such determinations, thereby placing such properties on the Inventory.
- M. To develop historic resource interpretive programs that will foster greater understanding of, and appreciation for, historic resources, including Carmel's origins and history.
- N. To review and advise the City Council on periodically updating the Historic Context Statement.

**Modification #24. Revise Section 17.32.4 and 17.32.4A,B,C,F Eligibility Criteria for the Carmel Inventory. As follows, add new sections G and H:**

The following types of resources are to be included in the Carmel Inventory: individual properties, historic districts, and archeological resources. Historic districts may consist of multiple properties that are united geographically and located with a defined boundary, or isolated properties that do not share a geographic boundary but are united by a common theme (also known as a “thematic grouping”). The Director and the Historic Resources Board, based on recommendations of in coordination with qualified professionals shall use the following criteria in making determinations on the eligibility of properties for the Carmel Inventory. To be eligible for the Carmel Inventory, historic resources:

- B. ~~Shall retain substantial integrity. A property may be potentially significant under one or more of the above California Register criteria, however, if it does not substantially retain integrity, it shall not be included in the Inventory or considered an historic resource.~~ Integrity (association, feeling, setting location, design,



materials and workmanship) shall be documented by comparing the existing condition of the resource with the original building plans or early records and photographs, or other substantial evidence (e.g. literature review, Sanborn maps, architectural files, land records) and/or by physical inspection by a qualified professional. Integrity shall be assessed by (1) defining the physical features that must be present for a property to represent its significance, (2) determining whether these features are still visible enough to convey significance, (3) determining whether the property needs to be compared to other similar properties to understand its significance, and (4) determining which aspects of integrity are vital if the property is to qualify as a resource (see National Register of Historic Resources, Bulletin #15).

- C. Should be a minimum of 50 years of age and Shall meet at least one of the four criteria for listing in the California Register at a national or statewide level of significance (primary resource) or at a regional or local level of significance (local resource) per CEQA Guidelines Section 15064.5(a)(3):
  - 1. Is associated with events that have made a significant contribution to the broad patterns of local or regional history or the cultural heritage of California or the United States;
  - 2. Is associated with the lives of persons important to local, California or National history;
  - 3. Embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of a master, or possesses high artistic values, or;
  - 4. Has yielded, or has the potential to yield, information important to the prehistory or history of the local area, California or the Nation.
  
- F. All properties included in the Inventory as of the date of final certification of the LCP, are hereby included in the Carmel Historic Resource Inventory unless removed by the Historic Resources Board pursuant to 17.32.7D. Recordation and notice of the inclusion of these resources in the Inventory shall be provided pursuant to 17.32.7C. All subsequently identified Historic Resources shall be added to the Carmel Historic Resource Inventory and reported to the Historic Resources Board.
  
- G. Any interested parties or organizations may submit to the City, requests or applications for identification of historic resources to be included in the Inventory. The City shall process such requests or applications within 60 days, consistent with the procedures established in this Chapter.
  
- H. A resource less than fifty (50) years old may be eligible if it is of exceptional importance to the City, State, or Nation based on its unusually strong contribution to history, architecture, engineering or culture, or because it is an integral part of an historic district.

**Modification #25. Revise Section 17.32.5.B Alteration of Property as follows:**



- B. No application for property development shall be deemed complete unless it includes an ~~Administrative~~ Determination that the property is either eligible or ineligible for the Carmel Inventory. For properties where eligibility has not yet been established, the Department shall initiate the process for determining eligibility upon the filing of any application for property development.

**Modification #26. Revise and add to Section 17.32.6 Determining Eligibility for the Carmel Inventory as follows:**

- A. Historic Context Statement.
1. The City shall maintain an Historic Context Statement.
  2. The purpose of the Historic Context Statement is to establish a baseline of information against which the potential historic significance of a property is evaluated. "The significance of a historic property can be judged and explained only when it is evaluated within its historic context. Historic contexts are those patterns or trends in history by which a specific occurrence, property, or site is understood and its meaning (and ultimately its significance) within history or prehistory is made clear." (National Register Bulletin: "How to Apply the National Register Criteria For Evaluation," p. 7). However, exclusion of a resource type from the context statement shall not preclude a finding of historical significance by a qualified professional.
  3. The Historic Context Statement shall be updated at least every five years. Updates shall be submitted to the California Coastal Commission as LCP amendments.
  4. Staff may, as part of any updates to the Historic Context Statement, require that a reconnaissance survey be conducted by a qualified professional.
- B. Initial Assessment of Historic Significance.
3. If, based on the initial assessment, the property is determined to be ineligible for the Inventory, is outside the Archaeological Overlay Zone, and no evidence of archaeological resources is present, then no further action is required except as otherwise stated below, and the Department shall issue a finding Determination of Ineligibility consistent with 17.32.6.D, below. ~~All Determinations of Ineligibility shall be provided to anyone who has requested a copy of such determinations and shall be transmitted to members of the Historic Resources Board before a project is calendared for design review. Determinations of Ineligibility made by the Department may be appealed to the Board as established in section 17.32.18.~~
- C. Intensive Survey.



2. If the intensive survey determines that the property is ineligible for the Inventory, ~~then all provisions of section 17.32.6.D shall apply. no further action is required and the Department shall issue a finding of ineligibility. All determinations of ineligibility shall be provided to anyone who has requested a copy of such determinations, and shall be transmitted to members of the Historic Resources Board before a project is calendared for design review. Determinations of ineligibility made by the Department may be appealed to the Historic Resources Board as established in section 17.32.18. Determinations of ineligibility shall not be final until all appeal processes have run.~~

D. Determinations of Ineligibility.

1. Upon making a determination that a property does not qualify for the Carmel Inventory, the City shall issue a Determination of Ineligibility. Each Determination of Ineligibility shall include the street location, the block and lot identification, age of structure, and a statement as to why the property is not eligible for the Carmel Inventory.
2. All Determinations of Ineligibility shall be (a) provided to anyone who has requested a copy of such determinations, ~~shall be~~ (b) transmitted to members of the Historic Resources Board and (c) made available for public review during normal business hours at City Hall for ten days, before a project is calendared for design review. Upon receipt, any member of the Historic Resources Board may call a Determination of Ineligibility up for review by the Board by filing a written request with the Department during the appeal period.
3. Determinations of Ineligibility made by the Department may be appealed to the Historic Resources Board by any aggrieved person as established in section 17.32.18. Determinations of Ineligibility shall not be final until all appeal processes have run. The appeal period for Determinations of Ineligibility shall be 10 days from the date the decision was circulated and made available for public review as established above.
4. Determinations of Ineligibility shall be valid for a period of five years from the date of issuance except in the following circumstances:
  - a. Determinations of Ineligibility for properties developed less than fifty years prior to the Determination, but more than 45 years prior to the Determination, and which are ineligible for the Carmel Inventory primarily due to insufficient age shall be valid only until the building, structure or object reaches the age of fifty years.



E. Archaeological Resources.

3. Phase II Report: Testing. If the Phase 1 Report concludes that the property does or may contain archeological resources, then a Phase II Report shall be prepared by a qualified professional, in consultation with appropriate Native American representative(s) in order to identify appropriate mitigation measures (e.g. monitoring, avoidance, capping, documentation, recovery, etc.).
4. Phase III Report: Recovery. If the Phase II Report concludes that recovery is the appropriate mitigation then a Phase III Report shall be prepared by a qualified professional in consultation with appropriate Native American representative(s).
6. Archaeological reports shall be conducted under contract to the City, at the property owner's expense. The property owner shall provide access to the site and interior of any building or structure thereupon at a mutually agreed time. All recovered artifacts shall become the property of the City for use in research, interpretation and/or transmittal to appropriate entities agencies.

**Modification #27. Revise Section 17.32.7A and D(2) Maintaining the Inventory as follows:**

- A. Eligibility for the Carmel Inventory shall be established in conformance with the criteria and procedures in Sections 17.32.4: Eligibility Criteria for the Carmel Inventory, and 17.32.6: Determining Eligibility for the Carmel Inventory. Properties determined to be eligible by an Administrative Determination, or by the Historic Resources Board on appeal, shall become part of the Inventory upon completion of an inventory form documenting the resource and issuance of an Administrative Determination finding by the Department or adoption of a finding by the Board that the property meets the criteria for historic resources.
- D. Removal of Resources from Inventory.
  2. An Historic Resource in the Carmel Inventory shall be presumed historically significant and shall not be removed unless substantial evidence demonstrates that it is not an historic resource. Any decision to remove a resource from the Inventory shall require a public hearing by the Historic Resources Board and shall be based on a recommendation by a qualified professional. Substantial evidence shall include, but is not limited to:



**Modification #28. Revise Section 17.32.8A and B Qualifications of Professional Consultants as follows:**

- A. City List of Pre-Approved Professional Consultants. The City shall maintain a list of ~~pre-approved~~ state-certified qualified professionals capable of performing surveys, evaluating projects for consistency with the Secretary's Standards, assisting Staff and the Historic Resources Board with the preparation of Determinations of Consistency, evaluating the impact of projects on historic resources and developing mitigation measures, evaluating compliance with the State Historic Building Code, and preparing Historic Context Statement updates.
- B. Work to Be Done Under City Contract. The work of the qualified professionals shall be conducted under contract to the City. If the need for the work is the result of an application, the work shall be performed at the applicant's expense. If the work is the result of a City project or general request of the public pursuant to 17.32.4 (G), the work shall be performed at the City's expense.

**Modification #29. Revise Section 17.32.9.B.1 Carmel Register of Historic Resources.**

- B. Historic Districts.
  - 1. Historic districts may be considered for inclusion in the Carmel Register at the request of a property owner, within the proposed district, or as initiated by the Historic Resources Board, or the City Council if the district meets the criteria for inclusion in the Carmel Inventory. After preparation of explanatory and supporting material by the City or other interested party, the ~~The~~ City shall notify owners of contributing properties within the proposed historic district of the request for consideration of listing-and shall provide owners an opportunity and time frame in which to file a notice of objection to listing. Such objection shall take the form of a notarized letter certifying that (1) the party is the sole or partial owner of a contributing resource and (2) the party objects to listing on the Register. No action on listing of a historic district in the Register shall be taken if owners of more than 50% of the contributing resources within the district file an objection to listing.

**Modification #30. Revise Section 17.32.12 Alteration of Historic Resources as follows:**

- A. It shall be unlawful for any person, corporation, association, partnership or other legal entity to directly or indirectly alter, remodel, demolish, grade, relocate, reconstruct or restore any historic resource without first obtaining a Determination of Consistency with the Secretary's Standards, complying with the requirements of the CEQA, and obtaining a building permit or other applicable





permit from the City. Demolition of structures identified as historic resources on the Carmel Inventory is prohibited except as provided in section ~~17.32.2~~ 17.30.1. The alteration of any structure identified as an historic resource on the Carmel Inventory in a manner that is inconsistent with the Secretary's Standards is prohibited unless one or more of the findings established in section 17.64.5 is adopted.

- B. Nothing in this Chapter shall be construed to prevent the ordinary maintenance or repair of any exterior improvement or any exterior architectural feature in or on any historic resource that does not involve a change in design, materials, or external appearance thereof, nor does this Chapter prevent the alteration, restoration, demolition, removal, or relocation of any such improvement or architectural feature when the Department certifies to the Historic Resources Board that such action is required for the public safety due to an unsafe or dangerous condition and cannot be remedied under the California Historical Building Code.
- C. Duty to Keep in Good Repair. The owner, occupant or any other person in actual charge of a historic resource shall keep in good repair the exterior portions of all such buildings, structures, or improvements, and all interior portions thereof whose maintenance is necessary to prevent the deterioration and decay of any exterior improvement or exterior architectural features.
- D. Alterations, or relocations ~~or demolitions~~, which are the subject of a tax credit certification application shall be submitted to the Board for informational purposes. The Board shall have the option to submit comments on the application to the appropriate state or federal reviewing agency.

**Modification #31. Revise Section 17.32.13.A and C Design Study, Building Permit or Other Application for Alteration of Property as follows:**

- A. Upon submittal of a design study, building permit or other application for alteration of the property, the City shall determine if the subject property contains historic resources and is therefore eligible for the Carmel Inventory of Historic Resources.
  - 1. Properties that are already known to contain historic resources are included in the Inventory.
  - 2. Properties that are known not to contain historic resources are those that have been subject to an initial assessment or intensive survey and received a ~~finding~~ Determination of Ineligibility pursuant to this Chapter. A ~~finding~~ Determination of Ineligibility issued by the Department within five (5) years of the date of the application shall constitute a showing that the property is not an historic resource. The Department, shall have the discretion to accept ~~findings~~ Determinations of Ineligibility that are older than five (5) years, if there have been no changes to the Historic Context Statement or other demonstrated changes in circumstance that are applicable to the subject and if there is no substantial new evidence available that would affect the Determination.



3. If a property is not included in the Inventory and has not been subject to a previous site assessment or survey, the City shall require that the procedures for the identification of historic resources be followed, prior to determining whether a Determination of Consistency, pursuant to this chapter, is required for the project.
- C. No application shall be deemed complete without either documentation of eligibility (inclusion in the Inventory) or ineligibility (finding of ineligibility). If it is determined that the subject property contains historic resources, the applicant shall be required to obtain a Determination of Consistency with the Secretary of the Interior Standards for the Treatment of Historic Properties from the Historic Resources Board as part of the project review process.

**Modification #32. Revise Sections 17.32.14A and B Determination of Consistency with the Secretary's Standards as follows:**

- A. All major and minor alterations to historic resources shall require a Determination of Consistency with the Secretary's Standards. The Department shall make Consistency Determinations for minor alterations. Staff ~~may~~ shall retain a qualified professional, when necessary, to assist in making the Determination.
- B. Consistency Determinations for major alterations shall require an evaluation by a qualified professional and review and approval by the Historic Resources Board. Qualified professionals retained by the City to evaluate proposed alterations to historic resources shall be at the applicant's expense. The Department shall determine whether the proposed project constitutes a minor or major alteration.

**Modification #33. Revise Section 17.32.15A(2) and B Historic Evaluation Process for Minor Alterations as follows:**

- A. For the purposes of evaluating alterations to historic resources the following shall constitute minor alterations:
  2. Maintenance, repair, restoration or in kind replacement of severely deteriorated component features.
- B. Staff shall issue a Determination of Consistency for minor alterations that comply with the Secretary's Standards. For all projects that include items #11, #12, #13 and #14(a or b), staff shall consult with a qualified professional prior to making a determination of consistency. In approving minor alterations, staff shall ensure that integrity of the resource is maintained, that all character defining features are maintained and that no change will be authorized that would diminish the historic resource value or result in a subsequent determination that the resource is no longer eligible for the Carmel Inventory. Staff may prepare and process a Categorical Exemption under the proposed alteration. The Department shall then



cause the processing of the permit application to continue pursuant to standard City practices. Minor alterations that are found not to comply with the Secretary's Standards shall be considered and processed as major alterations requiring an evaluation by a qualified professional and final action by the Board.

**Modification #34. Revise Section 17.32.16.B.1(a) Historic Evaluation Process for Major Alterations as follows:**

- B. Determinations of Consistency for major alterations shall be prepared by a qualified professional and shall be supported by written documentation that (1) identifies which of the Secretary's Standards are applicable to the project, (2) reviews the proposed project and (3) explains the basis of the determination.
  - 1. If a proposed major alteration is found by the qualified professional to be consistent with the Secretary's Standards, the project shall be presumed to be consistent for purposes of making a preliminary determination regarding any required environmental documentation and Staff shall forward the application and evaluation to the Board for action.
    - a. If the Board concurs with the evaluation the Board shall issue a Determination of Consistency and adopt any appropriate conditions of approval. Any finding of compliance by the Board shall be supported by substantial evidence.

**Modification #35. Revise Sections 17.32.17A,C,D ~~Approval of Projects That Adversely Impact Historic Resources~~ as follows:**

- A. No permit authorizing significant adverse impacts to an historic resource inconsistent with the Secretary's standards shall be issued unless necessary to address a public health and safety emergency as provided in section 17.30.2 1 or until completion of the Environmental Impact Report (EIR) process and adoption of one or more of the findings in section 17.64.5. Preparation of an EIR for such projects shall include a review of project alternatives and/or mitigation measures that would achieve consistency with the Secretary's Standards, including consideration of the "no project" alternative. ~~and fulfill all or most of the project objectives to the extent feasible.~~ The EIR also shall include an analysis of the feasibility of each alternative.
- C. Except as authorized by the City Administrator consistent with section 17.30.21, approval of a permit to demolish or alter an historic resource that will cause significant adverse impacts to the resource shall incorporate conditions of approval deemed appropriate by the ~~decision-making body~~ Historic Resources Board or Planning Commission which may include any of the following:
  - 1. Documentation may be required of any resource in the Inventory to be demolished and/or for the property as a whole;



2. Design review for compliance with the Secretary's Standards may be required for any subsequent development on the property. With respect to demolition of a resources located within a district, the City shall take into account the importance of the affected resource to the integrity of the district, and may: limit the size of new development to that of the existing structure; require that the scale of new development be harmonious with other structures which contribute to the district's character; require retention or reconstruction of one or more building features; and/or require that any replacement structure be of like kind or quality to the demolished structure and contribute to or otherwise support the character and context of the district.
  3. Suspension of the issuance of the demolition permit for one hundred and eighty (180) days to allow time to take such steps as the City deems necessary to preserve or rehabilitate the structure concerned. Such steps may include consultation with civic groups, public agencies and interested citizens, exploration of the possibility of moving the resource proposed for demolition, and exploration of the possible acquisition of the property by public and private agencies. In the case of purchase or relocation by a third party, demolition may be denied where a third party is willing and able to purchase the property or relocated the resource, and makes a bona fide offer to purchase the property or resource at fair market value, as determined by appraisal, within the time established by this section.
- D. No permit to demolish an historic resource shall be issued without the concurrent issuance of a building permit for a replacement structure or project for the property involved unless necessary to address a public health and safety emergency.

**Modification #36. Revise Section 17.32.18.A and E Appeals as follows:**

- A. The issuance of a Finding of Ineligibility for the Inventory may be appealed to the Historic Resources Board, in accordance with standard City appeals procedures as established in sections 17.32.6 and 17.54.4B.
- B. The denial of a Determination of Consistency for any minor alteration to an historic resource may be appealed to the Historic Resources Board, in accordance with standard City appeals procedures as established in section 17.54.4.B.
- C. Denials of Determinations of Consistency for major alteration of historic resources may be appealed to the City Council, in accordance with standard City appeals procedures as established in section 17.54.4.B.
- D. Denials of permits for the demolition, alteration, or relocation of a resource in the Inventory or new construction on a property included in the Inventory may be appealed to the City Council, in accordance with standard City appeals procedures as established in section 17.54.4.B.



- E. If the Planning Commission determines a permit should not be issued for the demolition, alteration, or relocation of a resource in the Inventory or new construction on a property included in the Inventory, a new application affecting the same property may be submitted during the twelve (12) month period after the disapproval only if a substantial change is made in the plans for the project that addresses the original reasons for denial.

**Modification #37. Revise Section 17.32.19.C Enforcement and Penalties as follows:**

- C. Civil Penalties. Any person who alters, relocates, or demolishes an historic resource in violation of this Title shall be subject to an administrative penalty of up to \$250,000 for each violation. As part of any enforcement proceeding, violators may be required to reasonably restore the historic resource to its appearance, condition or setting prior to the violation, or shall be subject to one of the following limitations on the use of the property.
1. All subsequent development shall be limited to floor area, volume, coverage and height limits equal to 75% of the limits applicable to the property prior to the violation; or
  2. The property shall be ineligible for issuance of any building permits and shall be precluded from development for a period of up to ten (10) years.

**Modification #38. Revise Section 17.32.23.W and add new Sections DD and EE Definitions as follows:**

- W. "Qualified Professional" shall mean a person meeting the qualifications established by the State Historic Preservation Office OHP (i.e. Secretary of the Interior's Professional Qualification Standards (48 FR 4716-01 and 36 CFR Part 61, Appendix A)) and approved by the Department. A qualified professional shall also be state-certified by OHP and meet the minimum requirements in history, archaeology, architectural history, or historic architecture for the type of potential historic resource being surveyed. For archaeological resources, a qualified professional shall mean a "Registered Professional Archaeologist (or RPA).
- DD. "In-kind replacement" is defined as the "replacement of existing deteriorated building elements in such a manner as to match the original design using identical materials, forms and finishes as used in the original design, to the extent feasible, consistent with the Secretary of Interior's Standards."
- EE. "Feasible" shall mean capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

**Modification #39. Add Appendix as follows:** Add the Secretary of Interior's Standards and Guidelines as an appendix to the Implementation Plan. (The Secretary of the Interior's Standard for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings (1995, NPS)).



**CHAPTER 17.34: Landscaping****Modification #40. Revise Section 17.34.1 as follows:****17.34.1 Purpose.**

The purpose of this chapter is to protect and enhance Carmel-by-the-Sea's dominant Monterey pine urbanized forest and landscaped amenities. It is also the purpose of this chapter to provide for water conservation, and protect environmentally sensitive habitat areas from degradation by providing for the restoration of native vegetation in and around these areas.

**Modification #41. Revise Section 17.34.4.C3 as follows:****17.34.4 Plan Requirements.**

All new development or substantial alteration of existing development shall require submittal and approval of a Forest Enhancement and Management Plan and a Landscape Plan. ...

- C. Forest Enhancement and Maintenance Plan. Following the preparation of a preliminary site assessment, applicants shall submit a Forest Enhancement and Maintenance Plan which shall:...
- 3. Minimize the extent of the excavation and fill on a site to avoid adverse impacts on trees, consistent with Chapter 17.48, Tree and Shrub Maintenance and Protection, and to ensure that new development follows the natural contours of the site.

**Modification #42. Revise Section 17.34.6 as follows:****17.34.6 General Landscaping Standards.****A. Plant Selection.**

- 1. Landscape designs shall use plant species similar in character to those species established along the block and on adjoining properties except that use of invasive species is prohibited.
- 2. A minimum of 75 percent of new plant materials on a site shall be native plants and/or ~~non-invasive~~ drought tolerant plants determined by the City Forester.

**CHAPTER 17.36: Non-Conforming Uses****Modification #43. Revise Section 17.64.13 as follows:**

**Section 17.64.13 Nonconforming Structure - Reconstruction of a Structure More Than 75 Percent Destroyed.**



The following special findings are required for reconstruction of a nonconforming structure destroyed by more than 75 percent of the value of the structure from fire, explosion, acts of God, or act of the public enemy:

B. That based on plans and evidence submitted to the Planning Commission, the size, architecture and design of the reconstructed structure is not appreciably changed from the way it existed before it was destroyed;

## **CHAPTER 17.38: Parking**

### **Modification #44. Revise Section 17.38.2 as follows:**

#### **17.38.2 General Requirements**

The table in subsection (A) herein below establishes the minimum parking requirements for all uses, projects, developments and redevelopments. New projects or developments shall only be allowed when meeting all parking requirements of this chapter and the requirements of any use permit, subdivision approval or specific plan applicable to the property. Proposed uses within existing buildings may replace existing uses as long as any existing parking deficiencies on the property are not increased by the replacement. Proposed additions of floor area, new shops or dwelling units, or other similar changes in land use resulting in a net increase in parking requirements, as set forth in this chapter, shall provide all required parking generated by the new activities on the site.

Whenever a proposed activity requires the provision of additional parking spaces, the City shall establish a record for the property listing the number of spaces required by the proposed change and the manner in which the increased parking requirements has been satisfied. Required off-street parking may be satisfied by providing parking on- or off-site, unless otherwise prohibited in this chapter. To avoid double-counting, spaces used to satisfy the parking requirements of one property development shall not be used by another property development to satisfy its parking requirements.

Any proposed new building, or any substantial replacement or reconstruction or rebuilding of an existing building, as defined in section 17.70.2, shall provide all parking required by the provisions of this chapter. Replacement or reconstruction shall be deemed substantial if the value of the new construction equals or exceeds 50 percent of the construction value of the existing building.

### **Modification #45. Add the following new standard 17.38.6:**

#### **17.38.6 Parking Programs**

Enactment and/or implementation of any parking program that has the potential to limit or restrict free public parking within the City shall require a coastal development permit.



**CHAPTER 17.40: Signs**

**Modification #46. Modify the Standards for Permitted Residential Signs table in Section 17.40.6 as follows:**

STANDARDS FOR PERMITTED RESIDENTIAL SIGNS						
Type of Sign	Number	Size	Letter Size	Location	Material	Information
House/ Occupant Name	One	Two square feet	No limit	Private property	Natural and permanent material required	House or occupant name
No Soliciting/ No Handbills/ No Trespassing	One each	2" x 12"	N/A	<ul style="list-style-type: none"> <li>- Private property</li> <li>- Only at property line, front gate, front door or entry point.</li> <li>- <u>"No Trespassing" signs shall be prohibited within 20 feet of a public access point or recreational area.</u></li> </ul>	Permanent material required	No soliciting/ no handbills
Home Business	One	One square foot	No limit	Private property	Natural and permanent materials required	Business name on city business license

**CHAPTER 17.42: Storm Water Quality**

**Modification #47. Revise Section 17.42.2 D.1b as follows:**

**b. New Development and Redevelopment.**

The City ~~may~~ shall ~~adopt requirements identifying~~ require appropriate best management practices to control the volume, rate, and potential pollutant load of storm water runoff from new development and redevelopment projects as may be appropriate to minimize the generation, transport and discharge of pollutants as defined by Chapter 17.43. The City shall incorporate these requirements in any land use entitlement and construction or





building-related permit to be issued for the development or redevelopment and the Planning Director shall administer, implement, and enforce the provisions of Chapter 17.43.

**Modification #48. Add the following text to Section 17.42.2 D2 as follows:**

Watercourse Protection. Every person owning property through which a watercourse passes, or the person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, stagnant pools of water and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse to the extent required by the Director of Public Works. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse. The owner or lessee shall not remove healthy bank vegetation beyond that actually necessary for maintenance, nor remove said vegetation in such a manner as to increase the vulnerability of the watercourse to erosion. The property owner shall be responsible for maintaining and stabilizing that portion of the watercourse that is within their property lines to protect against erosion and degradation of the watercourse on-site and downstream. Property owner shall select "Soft Engineered" techniques when possible for maintaining and stabilizing stream banks.

**CHAPTER 17.43: New Water Quality Protection Ordinance**

**Modification #49. Replace existing reserved Chapter 17.43 with the following:**

**CHAPTER 17.43 – WATER QUALITY PROTECTION ORDINANCE**

**17.43.1 PURPOSE AND INTENT**

The purpose of this Chapter is to protect and enhance coastal waters within the City of Carmel in accordance with the policies of the City's Local Coastal Plan (§O5-45 & O5-46), Sections 30230, 30231, 30232 and 30240 of the California Coastal Act, and the City's Phase II NPDES permit requirements. To implement the certified Land Use Plan, application submittal requirements, development standards, and other measures are provided to ensure that permitted development shall be sited and designed to conserve natural drainage features and vegetation, minimize the introduction of pollutants into coastal waters to the maximum extent practicable, limit the discharge of stormwater runoff, and protect the overall quality of coastal waters and resources.

The intent of this Chapter is to address the following principles:

All development shall be evaluated by the Planning Director or his/her designee for potential adverse impacts to water quality and applicants should consider Site Design,



Source Control and Treatment Control BMPs in order to minimize polluted runoff and water quality impacts resulting from the development. Site Design BMPs reduce the need for Source and/or Treatment Control BMPs, and Source Control BMPs may reduce the amount of Treatment Control BMPs needed for a development. Therefore, BMPs should be incorporated into the project design in the following progression:

- Site Design BMPs
- Source Control BMPs
- Treatment Control BMPs

All development shall be designed to minimize the introduction of pollutants that may result in water quality impacts. Projects should be designed to control post-development peak runoff rates and average volumes to maintain or reduce pre-development downstream erosion rates. These objectives can be accomplished through the creation of a hydrologically functional project design that strives to mimic the existing natural hydrologic regime and by achieving the following goals:

- Maintain and use existing natural drainage courses and vegetation
- Conserve natural resources and areas by clustering development on the least environmentally sensitive portions of a site while leaving the remaining land in a natural, undisturbed condition
- Minimize the amount of directly connected impervious surface and total area of impervious surface
- Incorporate or connect to existing on-site retention and infiltration measures
- Direct rooftop runoff to permeable areas rather than driveways or impervious surfaces to reduce the amount of storm water leaving the site
- Minimize clearing and grading

Incorporating these goals and principles into the project design will help to minimize the introduction of pollutants to the site and decrease the amount of polluted runoff leaving the site, resulting in the overall objective of water quality protection. Sections 17.43.3B & C and 17.43.6 of the Carmel IP describe the requirements and process for implementing BMPs into development and provide examples of types of BMPs to incorporate.

Non-structural BMPs are preventative actions that involve management and source controls such as protecting and restoring sensitive areas such as wetlands and riparian corridors, maintaining and/or increasing open space, providing buffers along sensitive water bodies, minimizing impervious surfaces and directly connected impervious areas, and minimizing disturbance of soils and vegetation. Structural BMPs include: storage practices such as wet ponds and extended-detention outlet structures; filtration practices such as grassed swales, sand filters and filter strips; and infiltration practices such as infiltration basins and infiltration trenches. In many cases combinations of non-structural and structural measures will be required to reduce water quality impacts.



Non-structural and structural BMPs most applicable to the development projects are included in “ A Planner’s Guide to Conditions of Approval and Standard Mitigation Measures”. Additional guidance on best management practices is available from the State, the EPA and from other sources such as BASMAA “Starting at the Source”. Storm water technologies are constantly being improved, and staff and developers must be responsive to any changes, developments or improvements in control technologies.

#### 17.43.2 APPLICABILITY

All properties within the City of Carmel are located within the coastal zone as defined in the California Coastal Act and are subject to the policies, standards and provisions contained in the certified LCP that may apply. Where any standard provided in this Chapter conflicts with any other policy or standard contained in the City’s General Plan, Zoning Code or other City-adopted plan, resolution or ordinance not included in the certified Carmel LCP, and it is not possible for the development to comply with both the Carmel LCP and other plans, resolutions or ordinances, the policies, standards or provisions of the LCP shall take precedence consistent with the hierarchy established in section 17.2.9.

#### 17.43.3 APPLICATION SUBMITTAL REQUIREMENTS

For all projects requiring implementation of an Erosion and Drainage Control Plan (§17.43.3A), Water Quality Mitigation Plan (§17.43.3.D), or Storm Water Management Plan the following information shall be submitted with an application for a Coastal Development Permit according to the requirements listed below.

##### 17.43.3A Construction Phase Requirements: Erosion and Drainage Control Plan

##### Erosion and Drainage Control Plan.

All development permit applications involving alterations to existing buildings or site design, or construction of new buildings that meet the criteria below shall include a site-specific erosion and drainage control plan. Plans shall be required for new development that (1) increases site coverage by more than 5% of the site area or (2) involves grading that will affect drainage patterns on or off the site or (3) involves either a rebuild or construction of a new building.

The erosion and drainage control plan shall include a site specific erosion control plan that includes controls on grading (i.e. timing and amounts), best management practice for staging, storage, and disposal of construction materials, design specification of sedimentation basins and landscaping / re-vegetation of graded or disturbed areas. The plans shall also include as site specific polluted runoff control plan that demonstrates how runoff will be diverted from impermeable surfaces into permeable areas of the property in a non-erosive manner and filter and infiltrate stormwater prior to conveyance off site.



17.43.3B Post Construction Phase Requirements: Site design and source control measures

Post construction plans detailing how storm water and polluted runoff will be managed or mitigated should be included in the design of all projects that require an Erosion and Drainage Control Plan (§17.43.3A). Project submittals shall include details regarding how the project will use appropriate Site Design and Source Control BMPs to minimize adverse effects of the project on water quality.

For development which does not mitigate impacts to water quality using Site Design and Source Control measures and for certain special categories of development (see 17.43.3D of the Carmel IP below) a Water Quality Mitigation Plan will be required showing how Treatment Control (or Structural) BMPs will be used (in addition to Site Design and Source Control BMPs) to minimize the discharge of polluted runoff from the project.

All development that requires an Erosion and Drainage Control Plan shall require the implementation of appropriate Site Design and Source Control BMPs from 17.43.3C of the Carmel IP and Appendix I to minimize post-construction polluted runoff. The project plans submitted with the permit application should also specify any Treatment Control or Structural BMPs that the applicant elects to include in the development to minimize post-construction polluted runoff, and include the operation and maintenance plans for these BMPs.

The following information should be included in the submitted design plans:

- Site design and source control BMPs that will be implemented to minimize post-construction polluted runoff (see 17.43.6 of the Carmel IP)
- Drainage improvements (e.g., locations of infiltration basins)
- Potential flow paths where erosion may occur after construction
- Methods to accommodate onsite percolation, revegetation of disturbed portions of the site, address onsite and/or offsite impacts and construction of any necessary improvements
- Storm drain pollution prevention measures including all construction elements and Best Management Practices (BMPs) to address the following goals in connection with both construction and long-term operation of the site:
  - a. Maximize on-site retention and infiltration measures including directing rooftop runoff to permeable areas rather than driveways



- b. Maximize, to the extent practicable, the percentage of permeable surfaces and limit directly connected impervious areas in order to allow more percolation of runoff into the ground

#### 17.43.6C Less than Significant Impacts

The following land uses and projects are generally presumed to have a less than significant project-specific water quality impact. These include:

- Redevelopment projects that reduce the amount of impervious surfaces on the site, do not change the land use or potential pollutants and are not one of the categories of development requiring a WQMP;
- New development and redevelopment projects that incorporate into the project design construction BMPs for erosion, sediment and construction waste control and incorporate post-construction BMPs to protect sensitive riparian or wetland resources, reduce the quantity of runoff, and treat runoff generated by the project to pre-project levels.

#### 17.43.3.D Post Construction Phase Requirements: Water Quality Mitigation Plan

Plans detailing how stormwater and polluted runoff will be managed or mitigated will be required for all projects that require an Erosion and Drainage Control Plan. The basic design elements for all projects (see 17.43.3B above) will demonstrate how the project will use appropriate Site Design and Source Control BMPs to minimize adverse effects of the project on water quality. For certain categories of development a Water Quality Mitigation Plan will be required showing how Treatment Control (or Structural) BMPs will be used (in addition to Site Design and Source Control BMPs) to minimize the discharge of polluted runoff from the project.

A Water Quality Mitigation Plan (WQMP) shall be required for all development that requires Erosion and Drainage Control Plan and either fails to address water quality impact using Site Design and Source Control Measures or is in a category of development identified below. In addition to the Site Design and Source Control BMPs required for a Storm Water Management Plan, the WQMP shall include Treatment Control (or Structural) BMPs identified in Appendix I to minimize post-construction polluted runoff. The WQMP shall also include the operation and maintenance plans for these BMPs.

#### 17.43.3E Special Categories of Development

A WQMP shall be required for projects that fall into one or more of the following categories of development and are not able to meet the appropriate treatment controls



for the specific pollutants associated with those development types (Appendix J) as part of the design:

- Industrial/commercial development
- Restaurants
- Retail gasoline outlets /Automotive service facilities
- Parking lots (5,000 square feet or more of impervious surface area or with 25 or more parking spaces)/ Outdoor storage areas
- Projects that discharge to an ESA or coastal water<sup>1</sup>

#### 17.43.3F Contents of a Water Quality Mitigation Plan

The WQMP shall be certified by a California Registered Civil Engineer or Licensed Architect and approved by the City's Department of Public Works or the City Engineer. The following information shall be included in a WQMP:

- Site design, source control and treatment control BMPs that will be implemented to minimize post-construction polluted runoff (see 17.43.6A and 17.43.6B)
- Pre-development peak runoff rate and average volume
- Drainage improvements (e.g., locations of diversions/conveyances for upstream runoff)
- Potential flow paths where erosion may occur after construction
- Methods to accommodate onsite percolation, revegetation of disturbed portions of the site, address onsite and/or offsite impacts and construction of any necessary improvements

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<sup>1</sup> Environmentally Sensitive Areas: All development and redevelopment located within or directly adjacent to or discharging directly to an environmentally sensitive area (where discharges from the development or redevelopment will enter receiving waters within the environmentally sensitive area). "Directly adjacent" means situated within 200 feet of the environmentally sensitive area. "Discharging directly to" means outflow from a drainage conveyance system that is composed entirely of flows from the subject development or redevelopment site, and not commingled with flows from adjacent lands



- Measures to treat, infiltrate, and/or filter runoff from impervious surfaces (e.g., roads, driveways, parking structures, building pads, roofs, patios, etc.) on the subject parcel(s) and to discharge the runoff in a manner that avoids erosion, gullyng on or downslope of the subject parcel, the need for upgrades to municipal stormdrain systems, discharge of pollutants (e.g., oil, heavy metals, toxics) to coastal waters, or other potentially adverse impacts. Such measures may include, but are not limited to, the use of structures (alone or in combination) such as biofilters and grasses waterways, on-site desilting basins, detention ponds, dry wells, etc.
- Where post-construction treatment controls are required, information describing how the BMPs (or suites of BMPs) have been designed to infiltrate and/or treat the amount of storm water runoff produced by all storms up to and including the 85th percentile, 24-hour storm event for volume-based BMPs, and/or the 85th percentile, 1-hour storm event, with an appropriate safety factor (i.e., 2 or greater), for flow-based BMPs. The term “treatment” includes physical, biological and chemical processes such as filtration, the use of bio-swales, detention and retention ponds and adsorption media. The actual type of treatment should be linked to the pollutants generated by the development as indicated in Appendix J.
- A long-term plan and schedule for the monitoring and maintenance of all drainage-control devices. All structural BMPs shall be inspected, cleaned, and repaired when necessary prior to September 30th of each year. Owners of these devices will be responsible for insuring that they continue to function properly and additional inspections should occur after storms as needed throughout the rainy season. Repairs, modifications, or installation of additional BMPs, as needed, should be carried out prior to the next rainy season.

The Public Works Director, the City Engineer, or his/her designee, who reviews drainage plans shall determine if the development post-development BMPs require efficacy monitoring and shall approve the monitoring program.

#### 17.43.3G CEQA

Provisions of this section shall be complementary to, and shall not replace, any applicable requirements for storm water mitigation required under the California Environmental Quality Act or § 17.42 of the IP.

#### 17.43.4 BMP MAINTENANCE AND CONDITIONS OF TRANSFER



All applicants shall provide verification of maintenance provisions for Structural and Treatment Control BMPs, including but not limited to legal agreements, covenants, CEQA mitigation requirements, and conditional use permits. Verification at a minimum shall include:

- The developer's signed statement accepting responsibility for maintenance until the responsibility is legally transferred; and either
- A signed statement from the public entity assuming responsibility for Structural and Treatment Control BMP maintenance and that it meets all local agency design standards; or
- Written conditions in the sales or lease agreement, which require the recipient to assume responsibility for maintenance and conduct a maintenance inspection at least once a year; or
- Written text in project conditions, covenants, and restrictions (CCRs) for residential properties assigning maintenance responsibilities to the Home Owners Association for maintenance of the Structural and Treatment Control BMPs; or
- Any other legally enforceable agreement that assigns responsibility for the maintenance of post-construction Structural and Treatment Control BMPs

#### 17.43.5 WATER QUALITY CHECKLIST

A water quality checklist will be developed by the City and used to supplement the CEQA checklist in the permit review process to assess potential water quality impacts and appropriate mitigation measures.

#### 17.43.6 DEVELOPMENT STANDARDS

##### 17.43.6A BMP Requirements and Implementation

All development shall be evaluated for potential adverse impacts to water quality and the applicant shall consider Site Design, Source Control and Treatment Control BMPs in order to minimize polluted runoff and water quality impacts resulting from the development. A SWMP requires the implementation of Site Design and Source Control BMPs, as specified in 17.43.3B of the Carmel IP, and a WQMP requires the implementation of Site Design, Source Control and Treatment Control BMPs, as specified in 17.43.3C of the Carmel IP. In order to maximize the reduction of water quality impacts, BMPs should be incorporated into the project design in the following progression: (1) Site Design BMPs, (2) Source Control BMPs, and (3) Treatment Control BMPs. Examples of these BMPs can be found in Section 17.43.7 and Appendix I of the Carmel LIP.





#### 17.43.5B BMP Selection Process.

In selecting BMPs to incorporate into the project design, the applicant should first identify the pollutants of concern that are anticipated to be generated as a result of the development. Table 1 in Appendix J should be used as a guide in identifying these pollutants of concern. Pollutants generated by the development that exhibit one or more of the following characteristics shall be considered primary pollutants of concern:

- Current loadings or historical deposits of the pollutant are impairing the beneficial uses of a receiving water
- Elevated levels of the pollutant are found in water or sediments of a receiving water and /or have the potential to be toxic to or bioaccumulate in organisms therein
- Inputs of the pollutant are at a level high enough to be considered potentially toxic

Site Design and Source Control BMPs are required based on pollutants commonly associated with the project type, as identified in Table 1. BMPs that minimize the identified pollutants of concern may be selected from the examples in Appendix I and Section 17.43.7 of the Carmel IP, targeting primary pollutants of concern first. In the event that the implementation of a BMP listed in Appendix I or Section 17.43.7 of the Carmel IP is determined to be infeasible at any site, the implementation of other BMPs that will achieve the equivalent reduction of pollutants shall be required.

Treatment Control BMPs should be selected using the matrix in Table 3 in Appendix J as guidance to determine the removal efficiency of the BMP for the pollutants of concern for that project. Treatment Control BMPs that maximize pollutant removal for the identified primary pollutants of concern should receive priority for BMP selection, followed by BMPs that maximize pollutant removal for all other pollutants of concern identified for the project. The most effective combination of BMPs for polluted runoff control that results in the most efficient reduction of pollutants shall be implemented. The applicant may select from the list of BMPs in Appendix I. In the event that the implementation of a BMP listed in Appendix I is determined to be infeasible at any site, the implementation of other BMPs that will achieve the equivalent reduction of pollutants shall be required.

#### 17.43.6C Sizing of Treatment Control BMPs

Where post-construction treatment controls are required, the BMPs (or suites of BMPs) shall be designed to infiltrate and/or treat the amount of storm water runoff produced by all storms up to and including the 85th percentile, 24-hour storm event<sup>2</sup> for volume-

<sup>2</sup> Considering the long-run records of local storm events in a 24-hour period, the 85<sup>th</sup> percentile event would be larger than or equal to 85% of the storms. The 85th percentile storm can be determined by reviewing local precipitation data or relying on estimates by other regulatory agencies. For example, the Los Angeles Regional



based BMPs, and/or the 85th percentile, 1-hour storm event, with an appropriate safety factor (i.e., 2 or greater), for flow-based BMPs.

The term “treatment” includes physical, biological and chemical processes such as filtration, the use of bio-swales, detention and retention ponds and adsorption media. The actual type of treatment should be suited to the pollutants generated by the development as indicated in Appendix J.

#### 17.43.6D Development on Steep Slopes

Soils shall be stabilized and infiltration practices incorporated during the development of roads, bridges, culverts and outfalls to prevent stream bank or hillside erosion. Project plans must include the following BMPs to decrease the potential of slopes and/or channels from eroding and impacting storm water runoff:

- Convey runoff safely from the tops of slopes and stabilize disturbed slopes
- Utilize existing natural drainage systems to the maximum extent feasible
- Control and minimize excess flow to natural drainage systems to the maximum extent feasible
- Stabilize permanent channel crossings using “soft engineering” practices when possible
- Vegetate slopes with native or drought tolerant vegetation

Additional measures to prevent downstream erosion, such as cisterns, infiltration pits and/or contour drainage outlets that disperse water back to sheet flow, shall be implemented for projects discharging onto slopes greater than 10 percent.

#### 17.43.6E Cumulative Impacts

Because of the city’s designation under the Phase II NPDES regulations, all discretionary projects (except those that do not result in a physical change to the environment) within the urbanized area whose contributions are cumulatively considerable must implement one or more best management practices to reduce their contribution to the cumulative impact.

#### 17.43.7 DEVELOPMENT-SPECIFIC DESIGN STANDARDS

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Water Quality Control Board has determined that 0.75 inch is an adequate estimate of the 85th percentile, 24-hour storm event for typical municipal land uses within its jurisdiction.



#### 17.43.7A Commercial Development

Commercial development shall be designed to control the runoff of pollutants from structures, parking and loading areas. The following measures shall be implemented to minimize the impacts of commercial development on water quality.

##### Properly Design Loading/Unloading Dock Areas

Loading/unloading dock areas have the potential for material spills to be quickly transported to the storm water conveyance system. To minimize this potential, the following design criteria are required:

- Cover loading dock areas or design drainage to minimize run-on and runoff of storm water.
- Direct connections to storm drains from depressed loading docks (truck wells) are prohibited.

##### Properly Design Repair/Maintenance Bays

Oil and grease, solvents, car battery acid, coolant, and gasoline from repair and maintenance bays can negatively impact storm water if allowed to come into contact with storm water runoff. Therefore, design plans for repair bays must include the following:

- Repair/ maintenance bays must be indoors or designed in such a way that doesn't allow storm water runoff or contact with storm water runoff.
- Design a repair/maintenance bay drainage system to capture all washwater, leaks, and spills. Connect drains to a sump for collection and disposal. Direct connection of the repair/maintenance bays to the storm drain system is prohibited. Obtain an Industrial Waste Discharge Permit if required.

##### Properly Design Vehicle/Equipment Wash Areas

The activity of vehicle/equipment washing/steam cleaning has the potential to contribute metals, oil and grease, solvents, phosphates, and suspended solids to the storm water conveyance system. Include in the project plans an area for washing/steam cleaning of vehicles and equipment. This area must be:

- Self-contained and/or covered, equipped with a clarifier, or other pretreatment facility, and properly connected to a sanitary sewer.

##### Properly Design Parking Areas

Parking lots contain pollutants such as heavy metals, oil and grease, and polycyclic aromatic hydrocarbons that are deposited on parking lot surfaces by motor vehicles.



These pollutants are directly transported to surface waters. To minimize the offsite transport of pollutants, the following design criteria are required:

- Reduce impervious surface land coverage of parking areas.
- Infiltrate runoff before it reaches storm drain system.
- Treat runoff before it reaches storm drain system.

Parking lots may also accumulate oil, grease, and water insoluble hydrocarbons from vehicle drippings and engine system leaks. To minimize impacts to water quality, the following measures are required:

- Treat to remove oil and petroleum hydrocarbons at parking lots that are heavily used (e.g. lots with 25 or more parking spaces, performing arts parking lots, shopping malls, or grocery stores).
- Ensure adequate operation and maintenance of treatment systems particularly sludge and oil removal, and system fouling and plugging prevention control.

#### 17.43.7B Restaurants

Restaurants shall be designed to minimize runoff of oil and grease, solvents, phosphates, and suspended solids to the storm drain system. The following measures shall be implemented to minimize the impacts of restaurants on water quality.

#### Properly Design Equipment/Accessory Wash Areas

The activity of outdoor equipment/accessory washing/steam cleaning has the potential to contribute metals, oil and grease, solvents, phosphates, and suspended solids to the storm water conveyance system. Include in the project plans an area for the washing/steam cleaning of equipment and accessories. This area must be:

- Self contained, equipped with a grease trap, and properly connected to a sanitary sewer.
- If the wash area is to be located outdoors, it must be covered, paved, have secondary containment and be connected to the sanitary sewer.

#### 17.43.7C Gasoline Stations and Automotive Repair Facilities

Gasoline stations and automotive repair facilities shall be designed to minimize runoff of oil and grease, solvents, car battery acid, coolant and gasoline to stormwater system.



The following measures shall be implemented to minimize the impacts of gasoline stations, and automotive repair facilities on water quality.

#### Properly Design Fueling Areas

Fueling areas have the potential to contribute oil and grease, solvents, car battery acid, coolant, and gasoline to the storm water conveyance system. Therefore, design plans for fueling areas must include the following:

- The fuel dispensing area must be covered with an overhanging roof structure or canopy. The canopy's minimum dimensions must be equal to or greater than the area within the grade break. The canopy must not drain onto the fuel dispensing area, and the canopy downspouts must be routed to prevent drainage across the fueling area. As an alternative, the site must be served by an oil/water separator or other source or treatment control BMP's that will achieve equivalent mitigation.
- The fuel dispensing area must be paved with Portland cement concrete (or equivalent smooth impervious surface), and the use of asphalt concrete shall be prohibited.
- The fuel dispensing area must have a 2% to 4% slope to prevent ponding, and must be separated from the rest of the site by a grade break that prevents run-on of storm water to the extent practicable.
- At a minimum, the concrete fuel dispensing area must extend 6.5 feet (2.0 meters) from the corner of each fuel dispenser, or the length at which the hose and nozzle assembly may be operated plus 1 foot (0.3 meter), whichever is less.

#### Properly Design Repair/Maintenance Bays

Oils and grease, solvents, car battery acid, coolant, and gasoline from the repair/maintenance bays can negatively impact storm water if allowed to come into contact with storm water runoff. Therefore, design plans for repair bays must include the following:

- Repair/maintenance bays must be indoors or designed in such a way that doesn't allow storm water run-on or contact with storm water runoff.
- Design a repair/maintenance bay drainage system to capture all wash-water, leaks, and spills. Connect drains to a sump for collection and disposal. Direct connection of the repair/maintenance bays to the storm drain system is prohibited. Obtain an Industrial Waste Discharge Permit if required.

#### Properly Design Vehicle/Equipment Wash Areas



The activity of vehicle/equipment washing/steam cleaning has the potential to contribute metals, oil and grease, solvents, phosphates, and suspended solids to the storm water conveyance system. Include in the project plans an area for washing/steam cleaning of vehicles and equipment. This area must be:

- Self-contained and/or covered, equipped with a clarifier, or other pretreatment facility, and properly connected to a sanitary sewer or to a permit disposal facility.

#### Properly Design Loading/Unloading Dock Areas

Loading/unloading dock areas have the potential for material spills to be quickly transported to the storm water conveyance system. To minimize this potential, the following design criteria are required:

- Cover loading dock areas or design drainage to minimize run-on and runoff of storm water.
- Direct connections to storm drains from depressed loading docks (truck wells) are prohibited.

#### 17.43.7D Outdoor Material Storage Areas

Outdoor material storage areas refer to storage areas or storage facilities used solely for the storage of materials. Improper storage of materials outdoors may provide an opportunity for toxic compounds, oil and grease, heavy metals, nutrients, suspended solids, and other pollutants to enter the storm water conveyance system. Outdoor material storage areas shall be designed to prevent stormwater contamination from stored materials. Where proposed project plans include outdoor areas for storage of materials that may contribute pollutants to the storm water conveyance system, the following measures are required:

- Materials with the potential to contaminate storm water must be: (1) placed in an enclosure such as a cabinet, shed or similar structure that prevents contact with runoff or spillage to the storm water conveyance system; or (2) protected by secondary containment structures such as berms, dikes or curbs.
- The storage areas must be paved and sufficiently impervious to contain leaks and spills.
- The storage area must have a roof or awning to minimize collection of storm water within the secondary containment area.

#### 17.43.7E Trash Storage Areas



A trash storage area refers to an area where a trash receptacle or receptacles are located for use as a repository for solid wastes. Loose trash and debris can be easily transported by the forces of water or wind into nearby storm drain inlets, channels, and/or creeks. Trash storage areas shall be designed to prevent stormwater contamination by loose trash and debris. All trash container areas must meet the following requirements (individual family residences are exempt from these requirements):

- Trash container areas must have drainage from adjoining roofs and pavement diverted around the area(s).
- Trash container areas must be screened or walled to prevent off-site transport of trash.

#### 17.43.8A Single Family Residential

To mitigate the increased runoff rates from Single Family Residences due to new impervious surfaces, new and remodel projects which need an Erosion and Drainage Control Plan shall include design elements which accommodate onsite percolation, retention or collection of storm water runoff such that the peak runoff rate after development either meets the 85th percentile storm event criterion or does not exceed predevelopment runoff levels to the maximum extent practicable. BMPs (including those outlined in the California Storm Water Best Management Practice Handbooks) which may achieve this objective fit into these categories:

- Minimizing Impervious Areas
- Increase Rainfall Infiltration
- Minimize Directly Connected Impervious Areas (DCIAs)

## **Appendix I**

### **STORM WATER BEST MANAGEMENT PRACTICES**

The following are a list of BMPs that may be used to minimize or prevent the introduction of pollutants of concern that may result in significant impacts to receiving waters. Other BMPs approved by the City as being equally or more effective in pollutant reduction than comparable BMPs identified below are acceptable. All BMPs must comply with local zoning and building codes and other applicable regulations.



### Site Design BMPs

#### Minimizing Impervious Areas

- Reduce sidewalk widths where it is practicable
- Incorporate landscaped buffer areas between sidewalks and streets.
- Design residential streets for the minimum required pavement widths
- Minimize the number of residential street cul-de-sacs and incorporate landscaped areas to reduce their impervious cover.
- Use open space development that incorporates smaller lot sizes
- Increase building density while decreasing the building footprint
- Reduce overall lot imperviousness by promoting alternative driveway surfaces and shared driveways that connect two or more homes together
- Reduce overall imperviousness associated with parking lots by providing compact car spaces, minimizing stall dimensions, incorporating efficient parking lanes, and using pervious materials in spillover parking areas

#### Increase Rainfall Infiltration

- Use permeable materials for private sidewalks, driveways, parking lots, and interior roadway surfaces (examples: hybrid lots, parking groves, permeable overflow parking, etc.)
- Direct rooftop runoff to pervious areas such as yards, open channels, or vegetated areas, and avoid routing rooftop runoff to the roadway or the urban runoff conveyance system

#### Maximize Rainfall Interception

- Maximizing canopy interception and water conservation by preserving existing native trees and shrubs, and planting additional native or drought tolerant trees and large shrubs

#### Minimize Directly Connected Impervious Areas (DCIAs)

- Draining rooftops into adjacent landscaping prior to discharging to the storm drain
- Draining parking lots into landscape areas co-designed as biofiltration areas
- Draining roads, sidewalks, and impervious trails into adjacent landscaping

#### Slope and Channel Protection

- Use of existing natural drainage systems to the maximum extent feasible
- Stabilized permanent channel crossings
- Planting native or drought tolerant vegetation on slopes
- Energy dissipaters, such as riprap, at the outlets of new storm drains, culverts, conduits, or channels that enter unlined channels





Maximize Rainfall Interception

- Cisterns
- Foundation planting

Increase Rainfall Infiltration

- Dry wells

Source Control BMPs

- Storm drain system stenciling and signage
- Regular street and parking lot sweeping
- Outdoor material and trash storage area designed to reduce or control rainfall runoff
- Efficient irrigation system

Treatment Control BMPs

Biofilters

- Grass swale
- Grass strip
- Wetland vegetation swale
- Bioretention

Detention Basins

- Extended/dry detention basin with grass lining
- Extended/dry detention basin with impervious lining

Infiltration Basins

- Infiltration basin
- Infiltration trench
- Porous asphalt
- Porous concrete
- Porous modular concrete block

Wet Ponds and Wetlands

- Wet pond (permanent pool)
- Constructed wetland



Drainage Inserts

- Oil/Water separator
- Catch basin insert
- Storm drain inserts
- Catch basin screens

Filtration Systems

- Media filtration
- Sand filtration

Hydrodynamic Separation Systems

- Swirl Concentrator
- Cyclone Separator



**Appendix J****BMP IMPLEMENTATION TABLES****Table 1. Anticipated and Potential Pollutants Generated by Land Use Type**

<b><u>Priority Project Categories</u></b>	<b><u>General Pollutant Categories</u></b>								
	<b><u>Sediments</u></b>	<b><u>Nutrients</u></b>	<b><u>Heavy Metals</u></b>	<b><u>Organic Compounds</u></b>	<b><u>Trash &amp; Debris</u></b>	<b><u>Oxygen Demanding Substances</u></b>	<b><u>Oil &amp; Grease</u></b>	<b><u>Bacteria &amp; Viruses</u></b>	<b><u>Pesticides</u></b>
<b><u>Detached Residential Development</u></b>	<u>X</u>	<u>X</u>			<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>
<b><u>Attached Residential Development</u></b>	<u>X</u>	<u>X</u>			<u>X</u>	<u>P<sup>(1)</sup></u>	<u>P<sup>(2)</sup></u>	<u>P</u>	<u>X</u>
<b><u>Commercial Development &gt;100,000 ft<sup>2</sup></u></b>	<u>P<sup>(1)</sup></u>	<u>P<sup>(1)</sup></u>		<u>P<sup>(2)</sup></u>	<u>X</u>	<u>P<sup>(5)</sup></u>	<u>X</u>	<u>P<sup>(3)</sup></u>	<u>P<sup>(5)</sup></u>
<b><u>Automotive service facilities</u></b>			<u>X</u>	<u>X<sup>(4)(5)</sup></u>	<u>X</u>		<u>X</u>		
<b><u>Retail Gasoline Outlets</u></b>			<u>X</u>	<u>X<sup>(4)(5)</sup></u>	<u>X</u>		<u>X</u>		
<b><u>Restaurants</u></b>					<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	
<b><u>Hillside development</u></b>	<u>X</u>	<u>X</u>			<u>X</u>	<u>X</u>	<u>X</u>		<u>X</u>
<b><u>Parking Lots</u></b>	<u>P<sup>(1)</sup></u>	<u>P<sup>(1)</sup></u>	<u>X</u>		<u>X</u>	<u>P<sup>(1)</sup></u>	<u>X</u>		<u>P<sup>(1)</sup></u>
<b><u>Streets, Highways &amp; Freeways</u></b>	<u>X</u>	<u>P<sup>(1)</sup></u>	<u>X</u>	<u>X<sup>(4)</sup></u>	<u>X</u>	<u>P<sup>(5)</sup></u>	<u>X</u>		
<u>X = anticipated</u> <u>P = potential</u> <u>(1) A potential pollutant if landscaping exists on-site</u> <u>(2) A potential pollutant if the project includes uncovered parking areas</u> <u>(3) A potential pollutant if land use involves food or animal waste products</u> <u>(4) Including petroleum hydrocarbons</u> <u>(5) Including solvents</u>									



Table 2. Site Design and Source Control BMP Selection Matrix

	<u>Specific Areas for Implementation of Site Design and Source Control BMPs</u>													
<u>Priority Project Categories</u>	<u>Private Roads</u>	<u>Residential Driveways &amp; Guest Parking</u>	<u>Loading/Unloading Dock Areas</u>	<u>Repair/Maintenance Bays</u>	<u>Vehicle Wash Areas</u>	<u>Outdoor Processing Areas</u>	<u>Equipment Wash Areas</u>	<u>Parking Areas</u>	<u>Roadways</u>	<u>Fueling Areas</u>	<u>Hillside Landscaping</u>	<u>Outdoor Material Storage Areas</u>	<u>Trash Storage Areas</u>	<u>Pools and Spas</u>
<u>Detached Residential Development</u>	<u>R</u>	<u>R</u>									<u>R</u>			<u>R</u>
<u>Attached Residential Development</u>	<u>R</u>												<u>R</u>	<u>R</u>
<u>Commercial Development ≥100,000 ft<sup>2</sup></u>			<u>R</u>	<u>R</u>	<u>R</u>	<u>R</u>						<u>R</u>	<u>R</u>	
<u>Automotive service facilities</u>			<u>R</u>	<u>R</u>	<u>R</u>		<u>R</u>			<u>R</u>		<u>R</u>	<u>R</u>	
<u>Retail Gasoline Outlets</u>			<u>R</u>	<u>R</u>	<u>R</u>		<u>R</u>			<u>R</u>		<u>R</u>	<u>R</u>	
<u>Restaurants</u>			<u>R</u>				<u>R</u>					<u>R</u>	<u>R</u>	
<u>Hillside development</u>	<u>R</u>										<u>R</u>			
<u>Parking Lots</u>								<u>R</u>					<u>R</u>	
<u>Streets, Highways &amp; Freeways</u>									<u>R</u>					
<u>R = Required – minimize pollutants of concern by selecting appropriate Site Design and Source Control BMPs</u>														



Table 3. Treatment Control BMP Selection Matrix<sup>(1)</sup>

<u><b>Pollutant of Concern</b></u>	<u><b>Treatment Control BMP Categories</b></u>						
	<u>Biofilters</u>	<u>Detention Basins</u>	<u>Infiltration Basins<sup>(2)</sup></u>	<u>Wet Ponds or Wetlands</u>	<u>Drainage Inserts</u>	<u>Filtration</u>	<u>Hydrodynamic Separator Systems<sup>(3)</sup></u>
<u>Sediment</u>	<u>M</u>	<u>H</u>	<u>H</u>	<u>H</u>	<u>L</u>	<u>H</u>	<u>M</u>
<u>Nutrients</u>	<u>L</u>	<u>M</u>	<u>M</u>	<u>M</u>	<u>L</u>	<u>M</u>	<u>L</u>
<u>Heavy Metals</u>	<u>M</u>	<u>M</u>	<u>M</u>	<u>H</u>	<u>L</u>	<u>H</u>	<u>L</u>
<u>Organic Compounds</u>	<u>U</u>	<u>U</u>	<u>U</u>	<u>U</u>	<u>L</u>	<u>M</u>	<u>L</u>
<u>Trash &amp; Debris</u>	<u>L</u>	<u>H</u>	<u>U</u>	<u>U</u>	<u>M</u>	<u>H</u>	<u>M</u>
<u>Oxygen Demanding Substances</u>	<u>L</u>	<u>M</u>	<u>M</u>	<u>M</u>	<u>L</u>	<u>M</u>	<u>L</u>
<u>Bacteria</u>	<u>U</u>	<u>U</u>	<u>H</u>	<u>U</u>	<u>L</u>	<u>M</u>	<u>L</u>
<u>Oil &amp; Grease</u>	<u>M</u>	<u>M</u>	<u>U</u>	<u>U</u>	<u>L</u>	<u>H</u>	<u>L</u>
<u>Pesticides</u>	<u>U</u>	<u>U</u>	<u>U</u>	<u>U</u>	<u>L</u>	<u>U</u>	<u>L</u>
<p>(1) <u>The City is encouraged to periodically assess the performance characteristics of many of these BMPs to update this table.</u></p> <p>(2) <u>Including trenches and porous pavement</u></p> <p>(3) <u>Also known as hydrodynamic devices and baffle boxes</u></p> <p><u>L: Low removal efficiency</u>  <u>M: Medium removal efficiency</u>  <u>H: High removal efficiency</u>  <u>U: Unknown removal efficiency</u></p> <p><u>Sources: Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters (1993), National Stormwater Best Management Practices Database (2001), and Guide for BMP Selection in Urban Developed Areas (2001).</u></p>							

**CHAPTER 17.44: Subdivisions and Lot-Line Adjustments****Modification #50. Add the following filing requirement to Section 17.44.2A:**

Section 17.44.2.A.8 A complete chain of title or other evidence that the lot to be subdivided or lots to be adjusted are legal parcels if requested by the Director of the Department of Community Planning and Building.

**Modification #51. Revise Section 17.44.3A as follows:**

Section 17.44.3.A. Only legal lots may be subdivided or the subject of a lot line adjustment. No subdivision or lot line adjustment shall be approved which increases or creates a zoning non-conformity or is inconsistent with the policies of the certified Local Coastal Land Use Plan. All lots and sites created shall comply with minimum standards established for the zoning district in which the property is located and with any other relevant requirements of the certified Local Coastal Implementation Plan.

**Modification #52. Revise Section 17.44.4 as follows:**

**Section 17.44.4**

Applications for lot line adjustments or the filing of merger documents resulting in the consolidation or merger of existing legal lots of record, or consolidating or merging combinations of existing lots and lot fragments, to create larger whole lots of record in the R-1 District may be approved by the Director of Community Planning and Building. All other applications for subdivisions and lot line adjustments shall require review for approval by the Planning Commission. Applications for subdivisions and lot line adjustments ~~resulting in the creation of additional lots of record or additional parcels, including condominiums~~ shall require a coastal development permit. The City shall follow all applicable procedures in the Subdivision map Act when processing any application for subdivision or lot line adjustment.

**CHAPTER 17.48: Trees and Shrubs**

**Modification #53. Revise Section 17.48.3: Exemptions as follows:**

**17.48.3**

The City is exempt from the provisions of Chapter 12 (commencing with Public Resources Code Section 25980), Division 15 of the Public Resources Code which chapter is known as the “Solar Shade Control Act.” The provisions of ~~this chapter~~ the Solar Shade Control Act also shall not apply to the cutting or trimming of trees or shrubs in the following circumstances:

**Modification #54. Revise Section 17.48.6B as follows:**

**B. Removal without Posting.** In exceptional circumstances in which it would cause substantial physical property damage ~~less~~ or danger to delay removal until the Forest and Beach Commission’s next meeting, the City Forester may approve removal without the required posting, providing such approval unquestionably conforms to the policy and the practice of the Forest and Beach Commission. The Forester will report permit actions at the next meeting of the Forest and Beach Commission.

**Modification #55. Revise Section 17.48.7 as follows:**



**17.48.7 Findings Required for Significant Trees.**

B. Related to Construction. Removal of significant trees to facilitate construction or development is prohibited unless one of the two following findings is met:

2. That the following four conditions exist
  - a. The issuance of a variance for development in one or more setbacks has been considered and would not provide a remedy or would be inappropriate due to a significant overriding inconsistency with another policy or ordinance of the LCP; and

**Modification #56. Revise Section 17.48.8 as follows:**

**17.48.8 Tree Removal and Replacement.**

**A. Tree Replacement.** When tree replacement is required by this Chapter, the following requirements apply.

3. Tree Species. Replacement trees shall be the same species as the removed tree or another species listed on the Tree Species List and as approved by the City Forester except that particular emphasis shall be placed on maintaining a significant population of native Monterey pine and coast live oaks on a City-wide basis. Replacement Monterey pine trees shall be of local genetic stock.

**Modification #57. Revise Section 17.48.14 as follows:**

**17.48.14 Administration****A. Responsibility of the City Forester.**

2. Enforcement of Code. The City Forester shall:
  - a. Supervise all tree cutting or pruning for which a permit has been granted.
  - b. Cause to be removed all dead trees or shrubs from public property (excluding Monterey Pine ESHA in Pescadero Canyon and Mission Trails Park) except in circumstances where all of the following conditions apply:

**CHAPTER 17.52 Permit Procedures**

**Modification #58. Add the following Section to Chapter 17.52:**

**PURPOSE**

The purpose and intent of this Chapter is to establish the procedures and authorities for review of permits required by this Title to ensure consistency with the City's General



Plan and zoning standards. It is also the purpose of this Chapter to establish the process for the review of all development within the coastal zone of the City of Carmel by the Sea to ensure that it will be consistent with the provisions of the City of Carmel by the Sea's Local Coastal Program, the California Coastal Act and the California Code of Regulations Title 14 Division 5.5.

**Modification #59. Add the following Section to Chapter 17.52**

PERMIT REQUIRED.

A. Except as otherwise provided in this Chapter, any person wishing to undertake any development in the coastal zone shall obtain a coastal development permit in accordance with the provisions of this Chapter. Development undertaken pursuant to a coastal development permit shall conform to the plans, specification, terms and conditions of the permit. The requirements for obtaining a coastal development permit shall be in addition to requirements to obtain any other permits or approvals required by other city ordinances or codes or from any state, regional or local agency.

B. The review of a Coastal Development Permit application may be combined with and/or processed concurrently with the review of any other discretionary permit application required by other City ordinances.

C. All development proposed or undertaken on tidelands, submerged lands or on public trust lands, whether filled or unfilled shall require a permit issued by the California Coastal Commission in accordance with procedures specified by the Coastal Commission, in addition to other permits or approvals required by the City.

D. Where a proposed project straddles the boundaries of the City of Carmel by the Sea and another local jurisdiction or where a proposed project straddles the boundaries of the City's Coastal Development Permit jurisdiction area and the Coastal Commission's retained jurisdiction area, the applicant shall obtain separate Coastal Development Permits from each jurisdiction.

**Modification #60. Add the following Section to Chapter 17.52**

PROCEDURES FOR RECORDATION OF LEGAL DOCUMENTS

All coastal development permits subject to conditions of approval pertaining to public access and open space or conservation easements to or along the shoreline shall be subject to one of the following procedures:





A. The executive director of the Coastal Commission shall review and approve all legal documents specified in the conditions of approval of a coastal development permit for shoreline public access and conservation/open space easements.

1. Upon completion of permit review by the City and prior to the issuance of the permit, the City shall forward a copy of the permit conditions and findings of approval and copies of the legal documents to the executive director of the Coastal Commission for review and approval of the legal adequacy and consistency with the requirements of potential accepting agencies;

2. Upon receipt of the documents from the City the executive director of the Coastal Commission shall notify the City of the receipt date and shall then have fifteen (15) working days from receipt of the documents in which to complete the review and notify the applicant of recommended revisions if any;

3. The City may issue the permit upon expiration of the fifteen (15) working day period if notification of inadequacy has not been received by the City within that time period;

4. If the executive director has recommended revisions to the applicant, the permit shall not be issued until the deficiencies have been resolved to the satisfaction of the executive director; or

B. If the City requests, the Commission shall delegate the authority to process the recordation of the necessary legal documents to the City if the requirements of 14 Cal. Code of Regulations, section 13574(b) are met. If this authority is delegated, upon completion of the recordation of the documents, the City shall forward a copy of the permit conditions and findings of approval and copies of the legal documents pertaining to the shoreline public access and open space conditions to the Executive Director of the Commission.

**Modification #61. Revise Section 17.52.2.A as follows:**

**Section 17.52.2 A: Development Applications.**

A. Applications. Any development as defined in Section 17.70.2 and not otherwise exempt, and all other activities subject to discretionary review and approval as established by this title shall require the filing of an application with the Director using forms and containing information as required by the City. Such application shall be accompanied by required fees as established by resolution of the City Council. Decision-making bodies established by the City may initiate a proceeding leading to the issuance of a permit, and in such case no fee shall be required

**Modification #62. Revise Section 17.52.2 D as follows:**



**Section 17.52. 2.D.3 Permit Streamlining**

The preparation and certification of the final Environmental Impact Report (EIR) for projects that are subject to environmental review or for which an EIR is needed, shall be completed within one year of the date that an application is accepted as complete. Upon the mutual consent of the Director and the project sponsor, this one-year time limit may be extended once for a period of not more than 90 days pursuant to CEQA Guidelines Section 15108. City action on such projects shall be completed within 180 days of the certification of the EIR unless the time for preparation of the EIR has been extended, in that case, city action is required within 90 days of certification.

**Modification #63. Revise Section 17.52.3.E as follows:****Section 17.52.3.E: Duties and Powers of the Director.**

To determine applicable categories for the processing of development applications including whether a project is subject to requirements for development permits, and if so, whether the permit is appealable to the Coastal Commission. The Director's determination of coastal development permit category may be appealed in compliance with ~~Chapter 17.52: Appeals,~~ and California Code of Regulations Section 13569.

**Modification #64. Revise Section 17.52.6 as follows:**

~~Section 17.52.6 Development Excluded from Coastal Permit Requirements.~~

~~Pursuant to Section 30610 of the California Coastal Act and Title 14, Chapter 6, Subchapter 5 of the California Code of Regulations, the following forms of development are excluded from the coastal permit requirements of this chapter. Any determination that a project is excluded from coastal development permit requirements shall comply with Section 17.52.6: Development Excluded from Coastal Permit Requirements. Nonetheless, the City shall notify the California Coastal Commission of any discretionary development permit it issues for excluded forms of development in accordance with Section 17.52.14: Notice of Non-Appealable Development, of this Chapter.~~

~~Improvements to Existing Structures or Site Designs Not Located in the Beach or ESHA Overlay Districts. Improvements to existing structures or site designs not located in the Beach or ESHA Overlay District shall not require a coastal development permit, provided all the following requirements are met.~~

~~The structure or improvement is not located on a beach, in a wetland, seaward of the mean high tide line, or within a designated environmentally sensitive habitat area.~~

~~The improvement does not include any significant alteration of landforms as determined by the Director nor involve the removal of significant vegetation as determined by the City Forester.~~



~~The improvement qualifies for an administrative permit issued by the Director (per CMC Chapter 17.34) and is fully consistent with adopted Commercial, Residential and/or Public Way Design Guidelines applicable to the project.~~

~~The project does not involve alterations to, or demolition of, a historic resource that is included in the Carmel Inventory, that would be inconsistent with the Secretary of the Interior's Standards.~~

~~The project does not require issuance of, or amendment to, a conditional use permit for: Expansion, reconstruction or relocation of any motel;~~

~~Expansion of any commercial building in the CC, SC, RC or R-4 Districts per Section 17.12.3: Demolition and Rebuilding of Structures; or~~

~~Approval of any subdivision or lot line adjustment resulting in the creation of additional parcels, additional building sites or potential additional building site.~~

~~The improvement does not involve the expansion or construction of water wells or septic systems.~~

~~The project does not involve any increase in capacity of any public works facility nor the widening or realignment of any street.~~

~~A previous coastal development permit issued for the property does not require a new coastal development permit for the proposed improvement.~~

~~Minor Improvements to Existing Structures and Site Designs within the Beach or ESHA Overlay Districts.~~

~~Minor improvements to existing structures and site designs located within the Beach Overlay District or the ESHA Overlay District shall not require a coastal development permit, provided that all requirements in subsection 17.52.6.A (1) through (5) are met and all the following additional requirements are met.~~

~~The improvement involves less than a 10-percent increase in existing floor area and/or less than a 10-percent increase in existing height. In no case shall this language be construed to allow increases in floor area or height that exceed the maximum allowed by residential development regulations contained in this Title.~~

~~An excluded improvement has not previously been undertaken after December 2003 that resulted in an increase in floor area or building height, or if such an excluded improvement has taken place, the combined total increase in interior floor area and/or building height does not exceed 10 percent of the original structure as it existed prior to the first excluded improvement. In no case shall this language be construed to allow increases in floor area or height that exceed the maximum allowed by residential and commercial development regulations contained in this Title.~~

~~Repair or Maintenance Activities.~~

~~Public and private repair and/or maintenance activities, except activities specified in subsection C: Replacement of Structures Destroyed by Disaster, that do not result in an addition to, or enlargement or expansion of, the object of those repair and maintenance activities, shall not require a coastal development permit, provided all the following requirements are met.~~

~~The activity does not include repair or maintenance of a seawall, revetment, bluff retaining wall, culvert, outfall, or similar shoreline work that involves:~~



~~Repair or maintenance involving substantial alteration of the foundation of the protective work;~~

~~The placement of rip-rap, artificial berms of sand or other beach materials, or any other forms of solid materials on a beach or in coastal waters, streams, wetlands, estuaries and lakes or on a shoreline protective work;~~

~~The replacement of 20 percent or more of the materials of an existing structure with materials of a different kind, color or appearance; and~~

~~The presence of mechanized construction equipment or construction materials on any sand area, bluff, or environmentally sensitive habitat area, or with 30 feet of coastal waters or streams.~~

~~The activity does not include any repair or maintenance to facilities, structures, or work located in an environmentally sensitive habitat area, any sand area, within 50 feet of the edge of a coastal bluff or environmentally sensitive habitat area, or within 30 feet of coastal waters or streams, that include:~~

~~The placement or removal of rip-rap, rocks, sand, or other beach materials or any other form of solid materials; and~~

~~The presence of mechanized equipment or construction materials.~~

~~Yearly Maintenance of Carmel Beach Sand.~~

~~Pursuant to California Code of Regulations Section 13252 (c), and the certified LUP, the yearly maintenance of Carmel Beach to redistribute sand and cover protective structures with sand using mechanized equipment shall not require a coastal development permit.~~

~~Planned Maintenance of Mission Trails Nature Preserve.~~

~~Maintenance, repair and improvement activities specified in the adopted Mission Trails Nature Preserve Master Plan shall not require a coastal development permit.~~

~~Utility Connections.~~

~~The installation, testing, and placement in service or the replacement of, any necessary utility connection between an existing service facility and any development approved pursuant to this subdivision, shall not require a coastal development permit.~~

~~Replacement of Structures Destroyed by Disaster.~~

~~The replacement of any structure, other than a public works facility, destroyed by a disaster shall not require a coastal development permit, provided the following requirements are met:~~

~~The replacement structure conforms to all applicable zoning requirements;~~

~~The use of the replacement structure is the same as the destroyed structure;~~

~~The replacement structure does not exceed either floor area, height, or bulk of the destroyed structure by more than 10 percent; and~~

~~The replacement structure is sited in the same location on the affected property as the destroyed structure.~~

~~Temporary Events.~~

~~Except as provided below, temporary events shall not require a coastal development permit unless the temporary event meets all of the following criteria:~~

~~The event is held between Memorial Day and Labor Day;~~



~~The event will occupy more than two blocks of sandy beach area; and~~

~~The event involves a charge for general public admission or seating.~~

~~The Director may also exclude from coastal development permit requirements, temporary events meeting the criteria of Section 17.52.6.H (1) when:~~

~~The event is one day or less in duration; or~~

~~The event has previously received a coastal development permit and will be held in the same location, at a similar season, and for the same duration, with operating and environmental conditions substantially the same as those associated with the previously-approved event.~~

~~The Director, or the Commission through direction to the Director, may determine that a temporary event shall be subject to Commission review and Coastal Development Permit requirements, even if the criteria in Section 17.52.6.H (2) are not met, if the Director or the Commission determines that unique or changing circumstances exist relative to a particular temporary event that have the potential for significant adverse impacts on coastal resources. Such circumstances may include the following:~~

~~The event, either individually or together with other temporary events scheduled before or after the particular event, precludes the general public from use of a public recreational area for a significant period of time;~~

~~The event and its associated activities or access requirements will either directly or indirectly impact environmentally sensitive habitat areas, rare or endangered species, significant scenic resources, or other coastal resources; and~~

~~The event is scheduled between Memorial Day weekend and Labor Day and would significantly impact public use or access to coastal waters.~~

~~Sign Installations and Modifications to Existing Signs.~~

~~The installation of new or replacement signs and modifications to existing signs shall not require a coastal development permit, provided the sign meets the requirements of the City of Carmel-by-the-Sea's Sign Ordinance and/or the certified Coastal Land Use Plan.~~

~~Public Signs Located in Public Rights-of-Way.~~

~~Public signs located in public rights-of-way shall not require a coastal development permit.~~

~~Subdivisions.~~

~~Tentative maps brought about in connection with the purchase of land by a public agency for recreational purposes that are consistent with Section 30106 of the Coastal Act shall not require a coastal development permit.~~

~~Lot Line Adjustments.~~

~~Lot line adjustments not resulting in a net increase in the number of building sites or potential building sites shall not require a coastal development permit. The filing of merger documents to merge lots of record or to merge lots and lot fragments into larger whole lots of record in any R-1 District shall not require a coastal development permit.~~

~~Conditional Use Permits.~~

~~The issuance of conditional use permits shall not require a coastal development permit unless the permit involves one or more of the following:~~



~~Alteration of any nonconforming use or nonconforming structure;  
Expansion, reconstruction or relocation of any motel; and/or  
Expansion of any commercial building in the CC, SC, RC or R-4 Districts per section 17.14.5.D: Regulations Applied in All Commercial Districts.~~

~~Projects for which Local Permits Were Approved Prior to Certification of the Coastal Implementation Plan and Zoning Ordinance.~~

~~Projects for which local permits were approved after January 1, 1999, but prior to certification of the Coastal Implementation Plan, and which now require a Coastal Development Permit may, at the discretion of the Director, be excluded from the permit requirements of this Chapter, provided the Director takes the following actions:~~

~~Grants a permit renewal and time extension for the project pursuant to Section 17.52.15.C: Time Extensions; and~~

~~Determines that the project is in full compliance with all applicable policies and standards contained in the Carmel-by-the-Sea certified Local Coastal Program.~~

#### 17.52.6 EXEMPTIONS.

This section provides a list of classes and types of development that do not require a Coastal Development Permit. Each exemption in this list also contains limits that specify when the exemption does not apply. The following projects are exempt from the requirement to obtain a Coastal Development Permit.

##### **A. Categorically Excluded Development.**

Projects or activities specifically identified in a Categorical Exclusion Order certified by the California Coastal Commission consistent with Public Resources Code 30610(e) are exempt from Coastal Development Permit requirements.

##### **B. Improvements to Existing Single-Family Residences:**

Except as provided below in subsection-D, improvements to existing single-family residences are exempt from Coastal Development Permit requirements except as noted below in (D). For purposes of this section, the terms "Improvements to existing single-family residences" includes all fixtures and structures directly attached to the residence and those structures normally associated with a single family residence, such as garages, swimming pools, fences, storage sheds and landscaping. Unless specified in a Categorical Exclusion Order as described in (A) above, this exemption for single-family residences shall not apply to establishment of any Guest House or any Class III Subordinate Unit, nor shall any of the classes or types of development identified in subsection-D be exempt from permit requirements.

##### **C. Other Improvements.**

Except as provided below in subsection-D, improvements to any structure other than a single-family residence or a public works facility are exempt from Coastal Development



Permit requirements. For purposes of this section, where there is an existing structure, all fixtures and other structures directly attached to the structure and all landscaping shall be considered a part of that structure.

**D. Limits on Exemptions for Single-Family Residences and Other Improvements.** Except as may be addressed in 17.52.6.A, the following are not exempt from permit requirements.

1. Improvements to a structure if the structure or improvement is located: on a beach, in a wetland, seaward of the mean high tide line, in an environmentally sensitive habitat area, in an area designated as highly scenic in a certified land use plan, or within 50 feet of the edge of a coastal bluff.
2. On property not included in subsection (1) above that is located within those portions of the Beach and Riparian Overlay District that are west of North San Antonio Avenue or west of Carmelo Street;
3. Any significant alteration of land forms including removal or placement of vegetation, on a beach, wetland, or sand dune, or within 50 feet of the edge of a coastal bluff, or in environmentally sensitive habitat areas;
4. The expansion or construction of water wells or septic systems;
5. In areas which the City or Coastal Commission has declared by resolution after public hearing to have a critically short water supply that must be maintained for the protection of coastal resources or public recreational use, the construction of any specified major water using development not essential to residential use, including but not limited to swimming pools, or the construction or extension of any landscaping irrigation system or other improvement or activity inconsistent with the City's Water Management Plan (Chapter 17.50).
6. On property located in significant scenic resources areas City-wide as designated by the City or Coastal Commission, any improvement that would:
  - a. result in an increase of 10 percent or more of internal floor area of an existing structure or
  - b. result in an additional improvement of 10 percent or less where an improvement to the structure has previously been undertaken pursuant to this section or Public Resources Code section 30610(a), or
  - c. result in an increase in height of an existing structure by more than 10 percent and/or
  - d. would add any significant non-attached structure such as garages, fences, shoreline protective works or docks.



7. Any improvement where the development permit issued for the original structure by the Coastal Commission, regional Coastal Commission, or City indicated that any future improvements would require a Coastal Development Permit.

#### **17.52.6 D.Repair and Maintenance Activities.**

Repair or maintenance activities that do not result in an addition to, or enlargement or expansion of, the object of those repair or maintenance activities. The exemption provided in this section shall not apply to the following extraordinary methods of repair and maintenance which require a coastal development permit because they involve a risk of adverse environmental impact:

1. Any method of repair or maintenance of a seawall, revetment, bluff retaining wall, breakwater, groin, culvert, outfall, or similar shoreline work that involves:

a. Repair or maintenance involving substantial alteration of the foundation of the protective work including pilings and other surface or subsurface structures;

b. The placement, whether temporary or permanent, of rip-rap, artificial berms of sand or other beach materials, or any other forms of solid materials, on a beach or in coastal waters, streams, wetlands, estuaries and lakes or on a shoreline protective works;

c. The replacement of 20 percent or more of the materials of an existing structure with materials of a different kind; or

d. The presence, whether temporary or permanent, of mechanized construction equipment or construction materials on any sand area, bluff, or environmentally sensitive habitat area, or within 20 feet of coastal waters or streams.

2. Any method of routine maintenance dredging that involves:

a. The dredging of 100,000 cubic yards or more within a twelve (12) month period;

b. The placement of dredged spoils of any quantity within an environmentally sensitive habitat area, on any sand area, within 50 feet of the edge of a coastal bluff or environmentally sensitive habitat area, or within 20 feet of coastal waters or streams; or

c. The removal, sale, or disposal of dredged spoils of any quantity that would be suitable for beach nourishment in an area the City or the Coastal Commission has declared by resolution to have a critically short sand supply that must be maintained for protection of structures, coastal access or public recreational use.

3. Any repair or maintenance to facilities or structures or work located in an environmentally sensitive habitat area, any sand area, within 50 feet of the edge of a





coastal bluff or environmentally sensitive habitat area, or within 20 feet of coastal waters or streams that include:

a. The placement or removal, whether temporary or permanent, of loose rip-rap, rocks, sand or other beach materials or any other forms of solid materials;

b. The presence, whether temporary or permanent, of mechanized equipment or construction materials.

4. All repair and maintenance activities that are not exempt shall be subject to the LCP permit regulations, including but not limited to the regulations governing administrative and emergency permits. The provisions of Section 17.52.6.C) shall not be applicable to those activities specifically described in the document entitled Repair, Maintenance and Utility Hookups, adopted by the Coastal Commission on September 5, 1978 unless a proposed activity will have a risk of substantial adverse impact on public access, environmentally sensitive habitat area, wetlands, or public views to the ocean.

5. Unless destroyed by natural disaster, the replacement of 50 percent or more of a single-family residence, (as measured by 50% of the exterior walls), seawall, revetment, bluff retaining wall, breakwater, groin or any other structure is not repair and maintenance but instead constitutes a replacement structure requiring a coastal development permit.

#### **17.52.6.E Utility Connections.**

The installation, testing, and placement in service or the replacement of any necessary utility connection between an existing service facility and any development which has been granted a valid Coastal Development Permit; provided, however, that the City may, where necessary, require reasonable conditions to mitigate any adverse impacts on coastal resources, including scenic resources.

#### **17.52.6.F Structures Destroyed by Natural Disaster.**

The replacement of any structure, other than a public works facility, destroyed by a disaster provided that the replacement structure meets all the of the following criteria:

1. It is for the same use as the destroyed structure;
2. It does not exceed either the floor area, height, or bulk of the destroyed structure by more than 10 percent, and
3. It is sited in the same location on the affected property as the destroyed structure.

As used in this section, "Structure" includes landscaping and any erosion control structure or device which is similar to that which existed prior to the occurrence of the disaster.



#### **17.52.6.G Repair, Maintenance and Utility Hook-Up Exclusions.**

Repair and maintenance activities, specifically described in the document adopted by the Coastal Commission on September 5, 1978 titled "Repair, Maintenance and Utility Hook-Up Exclusions from Permit Requirements" unless the proposed activity will have a risk of substantial adverse impact on public access, environmentally sensitive habitat area, wetlands or public views to the ocean.

#### **17.52.6.H Temporary Event.**

Temporary events as defined in this ordinance and which meet all of the criteria in 1-4

1. The event will not occur between Memorial Day weekend and Labor Day or if proposed in this period will be of less than one day in duration including set-up and take-down; and

2. The event will not occupy any portion of a publicly or privately owned sandy beach or park area; public pier, public beach parking areas or the location is remote with minimal demand for public use, and there is no potential for adverse effect of sensitive coastal resources; and

3. A fee will not be charged for general public admission and/or seating where no fee is currently charged for use of the same area (not including booth or entry fees); or, if a fee is charged, it is for preferred seating only and more than 75% of the provided seating capacity is available free of charge for general public use.

4. The proposed event has been reviewed in advance by the Planning Director and the Director determined that it meets the following criteria:

a. The event will result in no adverse impact on opportunities for public use of or access to the area due to the proposed location and or timing of the event either individually or together with other temporary events scheduled before or after the particular event;

b. There will be no direct or indirect impacts from the event and its associated activities or access requirements on environmentally sensitive habitat areas, rare or endangered species, significant scenic resources, or other coastal resources as defined in this ordinance;

c. The event has not previously required a coastal development permit to address and monitor associated impacts to coastal resources. For all other proposed temporary events, a coastal development permit must be obtained prior to the event.

#### **17.52.6.I Record of Permit Exemptions**

The Planning Director shall maintain a record of all those developments within the Coastal Zone that have been authorized as being exempt from the requirement for a Coastal Development Permit pursuant to this Chapter. This record shall be available for



review by members of the public and and representatives of the California Coastal Commission. The Record of Exemption shall include the name of the applicant, the location of the project, and a brief description of the project and why the project is exempt.

**Modification #65. Revise Section 17.52.7 Public Hearings, as follows:**

**17.52.7.C.Procedure for Waiver.**

A public hearing for a project requiring an appealable coastal development permit may be waived for minor development if both of the following occur:

1. Public notice shall be provided of the pending application consistent with Section 17.52.44–13: Notice of ~~Non~~-Appealable Development, and including notice that no hearing will be held unless one is requested in writing; and
2. No request for public hearing is received by the City within ~~40-calendar~~ 15 working days from the date of the City sending the notice

**Modification #66. Revise Section 17.52.8: Final City Action on Coastal Development Permits as follows:**

**Section 17.52.8.A: Notice of Final City Action.** Within seven (7) calendar days of a Council decision on a permit, or at the close of the local appeal period (for example, from the Planning Commission to the Council) and all local appeals have been exhausted and meeting the requirements of subsection B, the City shall notify the following of its action by first class mail:

**Modification #67. Add new Section 17.52.8D on “ Contents of Final Local Action Notice” as follows;**

**D. Contents of Final Local Action Notice: The notice shall, at a minimum, include the following:**

1. Cover Letter. A cover letter that includes:
  - (a) Final Action. Clear statement that the notice package is a notice of final City action on a coastal development permit application;
  - (b) Application/Permit Number. All City application and permit numbers assigned to the approved or denied development;
  - (c) Interested Parties. Name and address of the applicant(s), property owner(s), applicant and/or property owner representative(s) (if any), and person(s) to whom the notice was sent upon request;
  - (d) Project Information. A clear description of the approved or denied development and its location (including, at a minimum, the street address/location and all Assessor Parcel Numbers);



- (e) City Action. The date of the City decision, the decision that was made and the City body making the decision.
  - (f) Appeal Information. Indication of whether the City decision is appealable to the Coastal Commission, and, if so, procedures for appeal of the City decision to the Coastal Commission;
  - (g) List of Attachments. A list of all attachments included with the notice (e.g., Adopted Findings, other staff reports, CEQA documents, etc.); and City Contact.
2. Attachments. Copies of the following:
- (a) Adopted City Documents. The adopted staff report, adopted findings, adopted conditions and clear indication that the copies are the adopted version.
  - (b) Plans. Clear site plans and elevations of the approved or denied development;
  - (c) CEQA Documents, if not previously sent to the Commission.

**Modification #68. Revise Section 17.52.13 Notice of Public Hearing, as follows:**

**17.52.13: Notice of Public Hearing.**

When a land use permit, or other matter requires a public hearing, the public shall be provided notice of the hearing in compliance with State law (Government Code Sections 65090, 65091, 65094 and 66451.3, and Public Resources Code 21000 et seq.), and as required by this Chapter. This section shall also constitute the noticing provisions for actions on Coastal Development Permits that are appealable to the Coastal Commission.

**A. Contents of Notice. Notice of a public hearing shall include:**

1. **Hearing Information.** The date, time, and place of the hearing and the name of the hearing body; the phone number and street location of the Department, where an interested person could call or visit to obtain additional information.
2. **Project Information.** The name of the applicant; the City's file number assigned to the application; a general explanation of the matter to be considered; a general description, in text and/or by diagram, of the location of the property that is the subject of the hearing.
3. **Statement on Environmental Document.** If a proposed Negative Declaration or final Environmental Impact Report has been prepared for the project in compliance with the City's CEQA Guidelines, the hearing notice shall include a statement that the hearing body will also consider approval of the proposed Negative Declaration or certification of the final Environmental Impact Report.



**B. Distribution of Notice:** At least 10 calendar days prior to the first public hearing on any residential design study, lot line adjustment, use permit, variance or any other equivalent development application requiring a formal public hearing or action that is appealable to the Coastal Commission, the Director shall cause notice to be provided by first-class mail or by hand delivery for the pending development application to all of the following:

1. Owners of the subject real property, or the owners' duly authorized agent, and the project applicant;
2. All persons who have requested to be on the mailing list for the subject hearings and who have paid for the mailing of such notice;
3. The California Coastal Commission;
4. All owners of real property, as identified on the last equalized property tax assessment roll within 300 feet and all occupants within 100 feet of the perimeter of the parcel for which a ~~lot line adjustment, subdivision, variance, use permit or~~ coastal permit is sought;
5. All owners of real property as identified on the last equalized property tax assessment roll within 100 feet of the perimeter of the parcel for which a design study permit is sought and a Coastal Development Permit is not applicable; and
6. ~~All current occupants of properties contiguous to the parcel on which the development is proposed.~~ A statement that the development is within the coastal zone
7. The system for local and Coastal Commission appeals, including any City fees charged for appeals.

**Modification #69. Revise Section 17.52.14 Notice of Non- Appealable Development as follows:**

**Section 17.52.14, Notice of Non-Appealable Development.**

The California Code of Regulations, Title 14, Section 13568b, requires that all development within the Coastal Zone (except development that is categorically excluded) must receive public notice, regardless of whether these regulations require a public hearing, before the development can be approved or disapproved. This Section provides notice requirements for projects which are (a) not appealable to the Coastal Commission in compliance with Public Resources Code Section 30603, ~~and~~ (b) not categorically excluded and (c) do not require a public hearing.

**A. Distribution of Notice.** Within 10 days of accepting a permit application for a non-appealable development, or at least 10 days before the City's decision on the application, the City shall provide notice, by first-class mail or by hand delivery, of the pending development approval, to:

1. All persons who have requested to be on the mailing list for the particular project or for decisions by the City;



2. All owners of real property as shown on the latest County equalized assessment roll, and residents, within a radius of 100 feet of the exterior boundaries of the parcel involved in the application; and
3. The Coastal Commission.

**B. Content of Notice.** The notice shall contain the information required for public notices in Section 17.52.13.A above, and the following:

1. The date the application will be acted upon by the City's review authority;
2. The City's general procedure concerning the submission of public comments either in writing or orally before the decision is rendered; and
3. A statement that a public comment period of sufficient time to allow for the submission of comments by mail will be held before the decision is rendered.
4. A statement that the development is within the coastal zone.
5. The date of filing of the application and the name of the applicant.
6. The number assigned to the application.
7. A description of the development and its location.

**Modification #70. Add the following Section to 17.52.14 Notice of Non-Appealable Developments that Require a Public Hearing as follows:**

**Notice of Non-Appealable Developments that Require a Public Hearing**

A. Notice of an application for a coastal development permit that is not appealable but that requires a public hearing under local ordinance shall be provided as follows:

Within ten (10) calendar days prior to the City's hearing on the application, notice, consistent with the provisions of 17.52.14 B shall be provided as follows:

1. If the matter is heard by the Planning Commission, notice shall be published in a newspaper of general circulation;
2. Notice by first class mail to any person who has filed a written request to be on the mailing list for that development project or for coastal decisions within the City;
3. Notice by first class mail to all property owners within 300 feet of the proposed project
4. Notice by first class mail or by hand delivery to occupants within 100 feet of the proposed project;
5. Notice by first class mail to the Central Coast District of the Coastal Commission.



## CHAPTER 17.54: Appeals

**Modification #71. Add the following Section to 17.54.1 Conclusive Decision-Appeal Period as follows:**

### **Section 17.54.1**

A. The findings and actions of the City Forester shall be final and conclusive from and after the date of final action unless an appeal is filed with the Forest and Beach Commission pursuant to Section 17.54.4.A: Appeals to the Forest and Beach Commission or with the Coastal Commission pursuant to Section 17.54.5.

B. The findings and actions of the Historic Resources Board shall be final and conclusive from and after the date of final action unless an appeal is filed with the City Council or the Coastal Commission pursuant to Section 17.54.4.B and the provisions in this chapter.

C. The findings and actions of the Planning Commission and the Design Review Board shall be final and conclusive from and after the date of final action unless an appeal is filed with the City Council pursuant to Section 17.54.4.B: Appeals to the City Council or with the Coastal Commission pursuant to Section 17.54.5.

D. The findings and actions of the City Council shall be final and conclusive from and after the date of final action unless an appeal is filed with the California Coastal Commission pursuant to Section 17.54.4.C: Appeals to the Coastal Commission.

E. The findings and actions of the Planning Director shall be final and conclusive from and after the date of final action unless an appeal is filed with the Planning Commission Secretary pursuant to 17.54.4: Appeals to the Planning Commission or Historic Resources Board, or with the Coastal Commission pursuant to 17.54.5.

**Modification #72. Revise Section 17.54.3 Grounds for Appeal on a Coastal Development Permit as follows:**

### **17.54.3 Grounds for Appeal on a Coastal Development Permit**

The grounds for appeals pursuant to Section 17.54.2.A shall be limited to ~~one or more of~~ the following:

~~A. The development fails to provide adequate physical access to the Coast or interferes with existing access as set forth in the City's certified Local Coastal Program. The grounds for appeal for any development approved described in Section 17.54.2. A, B, C and D shall be limited to an allegation that the development does not conform to the City's certified Local Coastal Program or the public access policies set forth in the Coastal Act.~~



~~B. The development fails to protect public views from any public road or from a recreational area to, and along, the coast as identified and set forth in the City's certified Local Coastal Program. The grounds for an appeal of a denial of any development described in Section 17.54.2.D shall be limited to an allegation that the development conforms to the standards set forth in the City's certified Local Coastal Program and the public access policies set forth in the Coastal Act.~~

~~C. The development is not compatible with the level and scale of development identified for the site or area in the City's certified Local Coastal Program.~~

~~D. The development may significantly and adversely alter existing natural landforms.~~

~~E. The development does not comply with shoreline erosion policies as established in the City's certified Local Coastal Program.~~

~~The grounds for appeal for any development reviewed pursuant to Section 17.54.2.B, C and D shall be limited to an allegation that the development does not conform to the City's certified Local Coastal Program.~~

**Modification #73. Revise Section 17.54.4.A. Appeals to the Forest and Beach Commission as follows:**

**A. Appeals to the Forest and Beach Commission or the Planning Commission.**

~~Decisions to approve or deny projects made by the City Forester may be appealed to the Forest and Beach Commission by filing a written notice of appeal in writing with the Forest and Beach Commission Secretary. Decisions made by the Planning Director may be appealed to the Planning Commission by filing a written notice of appeal with the Planning Commission Secretary. All valid appeals shall be filed within ten calendar days of the date of action and shall include any paying the required filing fees as established by City Council Resolution.~~

1. Such notice of appeal shall set forth specifically the ground or grounds upon which such appeal is taken, and the name, address and signature of the appellant.
2. Within ten working days after receipt of a valid appeal the applicable Planning commission secretary shall set a date for public hearing at which the applicable Planning commission shall consider the appeal. All appeals shall be heard within 60 days of the close of the appeal period.
- ~~3. In no case shall a decision of the City Forester, Parks and Beaches be ripe for appeal to the California Coastal Commission until after the exhaustion of all local appeals processes, including appeal to the Carmel-by-the-Sea City Council.~~





**Modification #74. Delete Section 17.54.4.B.3 Appeals to the City Council as follows:**

**B. Appeals to the City Council**

- ~~3. In no case shall a decision of the Planning Commission, Design Review Board, Forest and Beach Commission or Historic Resources Board be ripe for appeal to the California Coastal Commission until after the exhaustion of all local appeals processes, including appeal to the City Council.~~

**Modification #75. Revise Section 17.54.4.C, Appeals to the Coastal Commission as follows:**

**17.54.4.C Appeals to the Coastal Commission.**

The approval of an application for a project that is appealable to the Coastal Commission shall become effective at 5:00PM on the tenth (10th) working day following receipt by the Central Coast office of the California Coastal Commission of an adequate ~~the~~ Notice of Final City Action by the Executive Director of the California Coastal Commission, unless an appeal to the ~~City Council~~ Coastal Commission is filed during this period. The applicant or any aggrieved person shall first be required to exhaust local administrative remedies and appeals before appealing to the California Coastal Commission pursuant to Section 17.54.4.A or 17.54.4.B above, except as provided for in Section 17.54.5 below. Any appeal to the Coastal Commission must contain the following information:

1. The name and address of the permit applicant and appellant;
2. The date of the local government action;
3. A description of the development;
4. The name of the governing body having jurisdiction of the project area;
5. The names and addresses of all persons who submitted written comments or who spoke and left his or her name at any public hearing on the project, where such information is available;
6. The names and addresses of all other persons known by the appellant to have an interest in the matter on appeal;
7. The specific grounds for appeal;
8. A statement of facts upon which the appeal is based; and
9. A summary of the substantial issues raised by the appeal.

Any appeal of a final City action on a Coastal Development permit shall be made to the Coastal Commission's Central District Office. ~~in person or by first class mail.~~ The appellant shall also notify the applicant(s), any persons known to be interested in the application and the City of the filing of the appeal. In addition, the City shall be provided with a copy of the appeal by the appellant. Unwarranted failure to perform such



notification may be grounds for dismissal of the appeal by the Coastal Commission. The Coastal Commission shall notify the City by mail and by telephone within 24 hours of the receipt of any such appeal.

**Modification #76. Add New Section 17.54.4D as follows:**

**17.54.4.D Appeals to the Historic Resources Board.**

A. Determinations of Ineligibility, and decisions on projects made pursuant to the procedures and standards contained in Chapter 17.32 made by the Planning Director may be appealed to the Historic Resources Board by any aggrieved person by filing a written notice of appeal with the Board Secretary. All valid appeals shall be filed within ten calendar days of the date of action and shall include any required filing fees as established by City Council Resolution.

1. Such notice of appeal shall set forth specifically the ground or grounds upon which such appeal is taken, and the name, address and signature of the appellant.
2. Within ten working days after receipt of a valid appeal the applicable commission secretary shall set a date for public hearing at which the applicable commission shall consider the appeal. All appeals shall be heard within 60 days of the close of the appeal period.

**Modification #77. Revise Section 17.54.8, Appeals as follows:**

**17.54.8 Appeals**

A. Appeals of Decisions on Permits. Any decision to approve, deny or conditionally approve any permit made by the Director, the City Forester, the Planning Commission, or the Design Review Board or the Historic Resources Board may be appealed by any ~~person who considers himself/herself an aggrieved party and who so states under oath in the notice of the appeal.~~ Coastal Commissioners may appeal these decisions pursuant to Section 17.54.2 and 17.54.5.

B. Appeals of Final Local Decisions on Coastal Development Permits ~~by the City Council.~~

Any aggrieved person, including the applicant, or any two members of the California Coastal Commission, ~~or the Executive Director of the California Coastal Commission~~ may file an appeal of the final ~~city~~ city Council action on a Coastal Development Permit consistent with the provisions of this Chapter.



**Modification #78. Add the following definition to Section 17.70.2 Definitions as follows:**

Aggrieved Person. An "aggrieved person" means any person who, in person or through a representative, appeared at a City public hearing in connection with the decision or action appealed, or who, by other appropriate means prior to a hearing, informed the City of the nature of his/her concerns or who for good cause was unable to do either (i.e. defective notice). "Aggrieved person" includes the applicant for a permit .

## **CHAPTER 17.56: Restricted Commercial Uses**

**Modification #79. Revise Section 17.56 as follows:**

### **17.56.6 A. Abandonment and Re-Establishment of Motel Units**

9. Requests for conversion or demolition of hotel/motel units shall be contingent upon a finding that the existing number of hotel/motel units available for transient occupancy has not significantly diminished from the established limit identified in Table V-A: Limitations on Restricted Commercial Uses. Should the total number of hotel/motel units that have been converted, demolished or abandoned and are therefore available for re-establishment under the cap reach 50, any additional requests for conversion or demolition of hotel/motel units shall (1) be required to be offset one-for-one elsewhere in the City and (2) shall be contingent upon a finding that the balance between visitor-serving, commercial, and residential land uses is maintained.

## **CHAPTER 17.58: Design Review**

**Modification #80. Revise Sections 17.58.1 and 17.58.2 as follows:**

### **17.58.1 Purpose and Applicability**

B. Applicability. Design review is required for (1) specified physical improvements as established throughout this Title, (2) site-new development as defined in 17.70, and any substantial alterations, rebuilding, rehabilitation, new construction, exterior alterations, additions, signs, exterior lighting and landscaping associated with such construction, alterations or additions set forth in this chapter Title.

### **17.58.2 General Requirements and Responsibilities**

B. Coordination of Review Bodies. For any proposed major alteration affecting an historic resource in the commercial and R-4 districts, the Director shall schedule a review of the project plans by the Historic Resources Board for a determination of consistency with the



Secretary of Interior's standards. If the site assessment shows that trees will be affected by the project, the Director shall forward the plans to the City Forester for processing.

Any reviews by the Forest and Beach Commission and/or Historic Resources Board that are required for a project shall occur prior to consideration of the project by the Director, Design Review Board or the Planning Commission. The procedures established in Chapter 17.32: Historic Preservation, shall be followed if the project would affect a historic resource or if it is unknown whether the property contains a historic resource.

D. Design Review Responsibilities. The Planning Commission shall conduct design review for all projects that require a Use Permit, Variance, Subdivision, Lot Line Adjustment or other land use permit and for all projects subject to environmental review. Design review for all other projects shall be conducted by the Design Review Board or the Director pursuant to the specific requirements of this chapter. The Director may require Design Review Board or Planning Commission to review for any application that raises new policy issues or presents unusual circumstances not addressed by adopted policies, guidelines, or review criteria.

**Modification #81. Revise Section 17.58.3A2 and add 17.58.3.A.3 Commercial Design Review, Track One as follows:**

### **17.58.3 Commercial Design Review**

A. Commercial District Track One Design Review. The Director may approve Track One applications for design changes in all commercial zoning districts and the R-4 District based on a determination that such projects comply with the Zoning Ordinance and all applicable Commercial Design Guidelines and public way design guidelines.

1. *Applicability.* The following projects may be approved with Commercial Design Review Track One Design Review in the CC, SC, RC, and R-4 Districts:

2. *Procedures.* Within 30 days of the receipt of a complete application for a Commercial Administrative Permit, the Director shall review the proposed project for compliance with the standards and regulations of the CMC, the Coastal Implementation Plan, General Plan policies, Commercial Design Guidelines, Public Way Improvement Design Guidelines, and other applicable adopted design criteria. The Director may approve the application if all zoning standards are met and the project is consistent with all design guidelines. The Director shall refer for action by the Design Review Board any application for a project that does not comply with applicable adopted design guidelines and design criteria. Any proposed storefront remodels/alteration to a structure located within the Downtown Conservation District shall be reviewed by the Historic Preservation Board. The Director shall deny any application for a Commercial Track One Permit that does not comply with the CMC, the Coastal Implementation Plan, or the General Plan/Coastal Land Use Plan.

3. *Limits.* Track One review for projects involving historic structures or dwellings shall be limited to minor alterations pursuant to 17.32.15 of the LCP.



**Modification #82. Revise Section 17.58.3B2: Commercial Design Review, Track Two as follows:**

**B. Commercial District Track Two Design Review**

2. *Procedures.* Within 30 days of the receipt of a complete application proposing substantial design changes in any commercial zoning district or the R-4 District, the Director shall review the project for compliance with the standards and regulations of the CMC, General Plan policies, the Coastal Implementation Plan, and the Commercial Design Guidelines. Applications subject to design review pursuant to this section shall not require a public hearing unless the project involves a historic structure or dwelling, requires a Use Permit, Variance, Subdivision, Lot Line Adjustment, appealable Coastal Development permit, or other land use permit that requires a hearing in accord with the provisions of this title or State law. All Track Two projects shall be subject to the CDP requirements of the LCP and A a Track Two design review approval shall constitute a coastal development permit for any project subject to review under this section. Projects involving historic resources shall require a determination of consistency pursuant to 17.32.14.

**Modification #83. Revise Section 17.58.4A as follows:**

**17.58.4 Residential Design Review.**

**A. Residential District Track One Design Review.**

1. *Applicability.* Applications eligible for Track One review are limited to the following projects, subject to the restrictions in sub-section A.2 below:

a. Exterior alterations and additions that do not increase existing floor area by more than ~~45~~ 10 percent;

2. Restrictions. Track One review shall be limited to projects that:

d. Have not been the subject of a previous addition to a structure or dwelling pursuant to this section;

e. Do not increase the height of an existing structure and/or any significant non-attached structure such as garages, fences, shoreline protective works, etc. by more than 10%;

f. Are sited and designed to protect views to and along the ocean and scenic coastal areas;

3. *Procedures.*

a. The Director shall deny any proposed project that does not comply with the Zoning Ordinance/Coastal Implementation Plan or the General Plan/Coastal Land Use Plan. The Planning Director shall also require Track Two Design Review for all projects



that are not visually compatible with the character of the surrounding area or those that do not minimize grading and landform alteration.

**Modification #84. Revise Section 17.58.4B Residential Track Two Design Study as follows:**

**B. Residential Track Two Design Study.**

Track Two is a discretionary review process for projects that require a public hearing. Projects that require a demolition permit, Use Permit, Variance, or other land use permit or environmental review shall be reviewed by the Planning Commission. The Design Review Board shall take action on all other projects that require Track Two review. All Track Two projects are subject to the coastal development permit requirements of the certified LCP, and a Track Two Design Study approval shall constitute a coastal development permit. All Track Two projects shall require public notice and a hearing pursuant to Section 17.52.13: Notice of Public Hearing.

2. Procedures.

Step One: Preliminary Site Assessment:

a. *Applicability.* A Preliminary Site Assessment shall be conducted prior to the submission of design concept plans for the following:

i. All new construction, ~~and~~ rebuilding, and grading over 25 cubic yards;

ii. Residential additions that increase building coverage by more than 200 square feet or ~~15~~ 10 percent; and

iv. Any project involving tree removal or requiring significant cuts to the roots or limbs of any tree classified by the City Forester as "significant" or "moderately significant."

**Modification #85. Revise Section 17.58.4B.2.(b) and add new Section 17.58.4.B.2(f) as follows:**

**Step One: Preliminary Site Assessment:**

b. *Submittal Requirements.* The applicant shall submit two copies of a topographic survey prepared by a licensed surveyor or a civil engineer prior to submittal of design plans for design review. The survey shall document property boundaries, topographic contours, the location of all trees over two inches DBH, the outline of all existing structures on the property, the location of any easements, existing access, the edge of pavement for all adjoining streets and all existing areas of site coverage. The survey shall be reviewed with the applicant and/or representative in the field by the City Forester and by the Director. Where topography, soil conditions, street configuration or other factors might require unusual drainage solutions, the City Forester or the Director may call in the Public Works



Director for additional review and advice. In addition, the applicant shall deposit with the City an amount adequate to pay for a historic evaluation of any structure, dwelling, or property involved that is at least 50 years or greater in age and for which a Determination of Eligibility / Ineligibility for the Carmel Inventory has not yet been made or is out of date.

*f. Historic Resource Review.* For structures or dwellings 50 years of age or older, planning staff or a qualified professional shall compare and evaluate the existing condition of any structure or dwelling with the original building plans, early photographs, and other substantial evidence (i.e., literature review, architectural files, land records, and Sanborn maps). In addition staff shall:

- i. Identify the architectural style, period, age, and significant features of the structure or dwelling;
- ii. Identify any significant alterations to the structure or dwelling and those changes that are merely cosmetic;
- iii. Note the spatial relationship to notable site features and adjacent properties; and
- iv. Identify any heritage trees growing on the site or in the public right of way.

Structures or dwellings found ineligible for historic designation shall be reported to the Historic Resources Board in accordance with 17.32.6 C.2 and shall follow through the design concept and final details review process pursuant to 17.58.4. Structures or dwellings found to be eligible for historic designation shall be reported to the Historic Resources Board and require further investigation by a qualified professional pursuant to 17.32.6.

**Modification #86. Revise Section 17.58.4B and add new Section ii as follows:**

**Step Two: Design Concept Review:**

a. *Submittal Requirements.* The applicant shall prepare design concept plans including “stick” drawings showing building placement, building form, heights, setbacks, access, approximate placement of windows, decks and balconies, ~~required~~ proposed tree removals, rough grading, site coverage and floor area.

b. *Design Review Board or Planning Commission Review.*

i. The Design Review Board or Planning Commission shall review the proposed site design, basic massing, and other elements of the design concept for compliance with the City’s Design Concept Guidelines and the findings required in Section 17.64.8.A: Design



Study Approval. At the conclusion of this review the DRB or PC shall either (1) accept the design concept as submitted, (2) provisionally accept the design concept and provide direction to the applicant on plan revisions necessary to achieve compliance with the design guidelines and/or zoning standards, or (3) continue design concept for preparation of a new design concept if it is substantially out of compliance with the zoning standards or the design guidelines. Applicants unwilling to make the revisions directed by the DRB/PC in a provisionally accepted concept design or continued design concept may request denial of the project so that an appeal may be filed. A denial shall not be complete until findings are adopted.

ii. Projects involving a historic resource shall require a determination of consistency pursuant to 17.32.14. All project approvals shall be consistent with the Secretary of Interior's Standards for the rehabilitation of historic structures or dwellings except as provided in 17.30.1. Following action by the Historic Preservation Board, the project shall be scheduled for design concept and final details review by the Planning Commission or the Design Review Board consistent with this chapter.

**Modification #87. Revise Section 17.58.4B as follows:**

**Step Three: Final Details Review**

a. *Final Action.* The Board or Commission shall take final action on the application after the applicant submits the final design plans for review consistent with the City's Final Design Details Guidelines and the findings required in Section 17.64.8.B: Design Study Approval. For projects involving additions or alterations to historic ~~properties~~ resources or or limited changes to ~~existing non-historic~~ structures, the Director may authorize concept review and final details review to occur at the same meeting.

**Modification #88. Add new Section D to 17.58.5 Conditions of Approval as follows:**

In approving any application for design review, the decision-making authority may impose any conditions deemed necessary to:

D. Require mitigation for unavoidable impacts resulting from the development.

**Modification #89. Revise Section 17.58.6 Findings Required.**

A. Authority. The Director, the Design Review Board, Historic Preservation Board, or the Planning Commission, as applicable to the project, shall have the authority to approve, approve with modifications and/or conditions, or deny an application for design review based on written findings stating the reasons for the action. Findings shall be based on information in the record.

B. Findings for Design Review Approval. Before approving an application for design review in any district, the Director, the Design Review Board, Historic Preservation Board, or the Planning Commission shall find that the final design plans:





D. Findings Required for Approval of Deviations from Design Guidelines. In addition to any other findings required by this code, before approving any project in the Single Family Residential (R-1) District that deviates from the City's applicable adopted Design Guidelines, the Director, Design Review Board, Historic Preservation Board, or the Planning Commission shall adopt specific findings based on information in the record to show how the proposed deviation from the Design Guidelines achieves all of the applicable design objectives of Section 17.58.1: Purpose and Applicability, as well as, or better than, would be achieved by adherence to the adopted Design Guidelines:

**Modification #90. Revise Section 17.58.7 Enforcement as follows:**

No building or grading permit shall be issued until the Applicant submits a final site plan and building permit plans showing any changes required as a condition of design review approval. Staff shall review all building permit applications for projects subject to design review for compliance with approved design review plans and any conditions of approval. The Director may refer building permit plans to the Design Review Board or the Planning Commission for a determination of compliance with conditions of approval. After determining that the site plan and building plans comply with all conditions of approval, the Director shall forward copies of the approved plans to the Building Official. All future development shall comply with the approved building permit plans unless modifications or changes are approved pursuant to the requirements of this code. Failure to comply with the conditions of approval may result in enforcement proceedings and penalties levied against the applicant and his/her assigns pursuant to section 17.66.

**CHAPTER 17.62: Reclassifications and Amendments**

**Modification #91. Add the following text to section 17.62.6: Amendments to the Local Coastal Program:**

A. Contents of LCP Amendment Submittal

The LCP amendment submittal shall include at a minimum:

(1) A summary of the measure taken to provide the public and affected agencies and districts maximum opportunity to participate in the LCP amendment process; a listing of members of the public, organizations, and agencies appearing at any hearing or contacted for comment on the LCP amendment; and copies or summaries of significant comments received and of the local government or governing authority's response to the comments.

(2) All policies, plans, standards, objectives, diagrams, drawings, maps, photographs, and supplementary data, related to the amendment in sufficient detail to allow review for conformity with the requirements of the Coastal Act. Written documents should be readily reproducible. An amendment to a land use plan shall include, where applicable, a readily identifiable public access component.



(3) A discussion of the amendment's relationship to and effect on the other sections of the certified LCP.

(4) An analysis of the potential significant adverse cumulative impacts on coastal resources and access of existing and potentially allowable development proposed in the LCP.

(5) Any environmental review documents, pursuant to CEQA, required for all or any portion of the amendment to the LCP.

(6) An indication of the zoning measures that will be used to carry out the amendment to the land use plan (unless submitted at the same time as the amendment to the land use plan).

## **CHAPTER 17.64: Findings**

### **Modification #92. Add the following section to Chapter 17.64 Findings:**

#### Coastal Development Permits

All decisions on coastal development permits shall be accompanied by written findings:

A. That the project as described in the application and accompanying materials, as modified by any conditions of approval, conforms with the certified City of Carmel by the Sea Local Coastal Program; and

B. If the project is located between the first public road and the sea, that the project is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act of 1976 (commencing with Sections 30200 of the Public Resources Code).

### **Modification #93. Revise Section 17.64.5 as follows:**

#### **17.64.5 Adverse Impacts to Historic Resources**

The following special findings are required for approval of any permit that will authorize significant adverse impacts inconsistent with the Secretary's standards to any historic resource:

A. There is an immediate need to address a public health and safety emergency, Specific economic, legal, social, technological, or other benefits of the proposed project outweighs the unavoidable adverse impacts of the project; and ~~or~~



B. That, as determined through the environmental review process, there are no feasible alternatives consistent with the Secretary's standards that would achieve at least one-third of the base floor area allowed by the zoning applicable to the site. There are specific facts and circumstances documented in the record and referenced in subsequent findings, that are not of the applicant's own makings, which establishes that there are no feasible alternatives or mitigation measures that can be taken that will enable the property owner to make a reasonable economic beneficial use of the property or derive a reasonable economic return from the property.

**Modification #94. Revise and Add the following to Section 17.64.8A as follows:**

4. The project is adapted to human scale in the height of its roof, plate lines, eave lines, building forms, and in the size of window doors and entryways. The development is similar in size, scale, and form to buildings on the immediate block and neighborhood. Its height is compatible with its site and surrounding development and will not present excess mass or bulk to the public or to adjoining properties. Mass of the building relates to the context of other homes in the vicinity.

6. The design concept is consistent with the goals, objectives and policies related to residential design in the general plan/~~coastal land use plan~~

7. The development does not require removal of any significant trees unless necessary to provide a viable economic use of the property or protect public health and safety. All buildings and structures are setback a minimum of 6 feet from significant trees.

**CHAPTER 17.66: Enforcement**

**Modification #95. Add the following new Section 17.66.6: Enforcement and Penalties as follows:**

A. In addition to all other available remedies, the City may seek to enforce the provisions of the LCP and the Coastal Act pursuant to the provisions of the Public Resources Code section 30800- 30822.

B. Any person who performs or undertakes development in violation of the LCP or inconsistent with any Coastal Development Permit previously issued may, in addition to any other penalties, be civilly liable in accordance with the provisions of Public Resources Code Section 30820.

C. Pursuant to Public Resources Code section 30811, the Planning Director may, after a public hearing, order restoration of a site if it is found that the development has occurred



without a coastal development permit from the appropriate authority, the development is inconsistent with the Coastal Act, and the development is causing continuing resource damage. Pursuant to Public Resources Code section 30821.6, any person who intentionally or negligently violates a restoration order may be civilly liable for a penalty for each day in which the violation persists.

## CHAPTER 17.70: Definitions

**Modification #96. Add the following definitions and revise as follows:**

### Chapter 17.70.2: Definitions

Coastal Plan. "Coastal Plan" means the California Coastal Zone Conservation Plan prepared and adopted by the California Coastal Zone Conservation Commission and submitted to the Governor and the Legislature on December 1, 1975, pursuant to the California Coastal Zone Conservation Act of 1972 (commencing with Section 27000).

Coverage, Site. The total ground area of a site occupied by materials or improvements that cover the natural soil but which are outside the perimeter of structures that count as floor area. Site coverage includes:

A. Fully permeable materials including gravel, ~~decomposed granite~~, spaced decking and exterior stairs. However, shredded bark, wood chips and similar materials used as mulch within fully landscaped areas are not counted as site coverage.

C. Impermeable materials including asphalt, concrete, mortared brick and stone, decomposed granite, unspaced decking and balconies at any level, garden walls, solariums, bridges, sheds not counted as floor area, ponds, hot tubs and swimming pools.

ESHA. "Environmentally Sensitive Habitat Area" means any area in which plant or animal life or their habitats area either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and development.

Feasible. "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

Rebuilding. The act of reconstructing portions of an existing building or structure or making extensive repairs or modifications to an existing building or structure if such changes affect fifty percent (50%) or more of (1) both the structural framing and cladding or exterior walls, or (2) both the structural framing and covering of the roof. ~~Rebuilding includes, but is not limited to the removal or takedown from any building or structure of 50% or more of both the structural framing and cladding or exteriors walls or 50% or more of both the structural framing and covering of the roof.~~



When determining whether a building or structure is being rebuilt the following applies:

- A. The non-conforming portions of any wall or roof is counted as removed or taken down, even when retention of these portions is proposed.
- B. Exterior walls retained at 10 feet or less in length are counted as removed or taken down.
- C. Roof areas measuring 100 square feet or less in area are counted as removed or taken down.

Demolition. The act or process of complete destruction and removing or taking edown the of all above ground framing or structural elements and/or all exterior cladding of a building or structure including all roof framing and roof covering, and all exterior wall framing and wall cladding, if such changes demolish fifty percent (50%) or more of the identified components within a twenty-four (24) month period. When determining whether a building or structure is demolished, the following applies:

- A. The non-conforming portions of any wall or roof is counted as removed or taken down, even when retention of these portions is proposed.
- B. Exterior walls retained at 10 feet or less in length are counted as removed or taken down.
- C. Roof areas measuring 100 square feet or less in area are counted as removed or taken down.

Substantial Alteration. Any visual change, exterior design modification or addition to a building, structure, or site design, including but not limited to changes in architectural style or details, or changes in exterior materials, paving or decks that does not meet the definition of a demolition or a rebuild, or does not comply with adopted Design Objectives and/or Design Guidelines or does not qualify for Track One design review.

## **APPENDIX A: Shoreline Management**

### **Modification #97. Revise Appendix A: Shoreline Management Plan as follows:**

Throughout the document the term "Coastal Permit" is used. This should be modified to read "Coastal Development Permit."

### **Modification #98. Add the following text on page 1-5, prior to Section 1.2:**

Chapter 1: Introduction: A Shoreline to be Managed.



In the case of development review, it is important to note that the majority of the actual beach and base of the bluff area at Carmel Beach (including the revetments and the seawalls) is located within the California Coastal Commission's retained coastal permitting jurisdiction. Because of this, the standard of review for development in this area is the Coastal Act. In those cases, the General Plan/Implementation Plan can and will provide non-binding guidance to the Commission in making permitting decisions, but the decisions will be based on the policies of the Coastal Act.

**Modification #99. Add the following to page 9 - 5 of the Shoreline Management Plan:**

Chapter 9.2: Shoreline Maintenance and Emergency Action Response Plan

As noted in Chapter One, the majority of the actual beach and base of the bluff area at Carmel Beach (including the revetments and the seawalls) is located within the California Coastal Commission's retained coastal permitting jurisdiction. As a result, the majority of development associated with this emergency action response plan will require a coastal development permit from the Coastal Commission. The City intends to submit a coastal development permit application to the Commission by June 2004 for routine long-term maintenance activities in the beach area (e.g., revetment, seawall, and stairway maintenance), and will continue to coordinate with the Commission on non-routine development (e.g., emergencies and new structures), including by obtaining emergency permits from the Commission as necessary.

**Modification #100. Add to the second paragraph text on page 9 – 17 of the SMP as follows:**

Chapter 9.4 Shoreline Inspection and Maintenance Checklist

Throughout the checklist below, specific items that typically require a coastal development permit are identified. Items not so identified generally do not require a coastal development permit. For proposed development in the shoreline area, both the City Planning Director and the Coastal Commission should be contacted for a determination of what development does and does not require a coastal permit, and from which entity. Whenever there is doubt, the Planning Director shall determine the need for a permit. The City shall submit a coastal development permit application to the California Coastal Commission by June 2004 to implement the inspection and maintenance activities identified within.

**Modification #101. Add the following on Page III-29 of the IP:**

17.20.17 D. Shoreline Armoring Alternatives Analysis. Applicants shall submit a complete evaluation of a reasonable range of potential alternatives including 1) project alternatives that will avoid the need for armoring, including, but not limited to, relocation of the threatened (infra)structure(s) away from danger, 2) various armor solutions (e.g., vertical seawalls), 3) "soft"



options, and 4) the no project alternative. The evaluation shall identify the environmentally least damaging feasible alternative that provides effective protection of existing development and minimizes impacts on public access, recreation, scenic resources, and sand supply.

**Modification #102. Add the following on Page III-29 of the IP:**

17.20.17.E Shoreline Armoring Construction Plan. Applicants shall submit a Construction Plan that identifies the specific location of all construction areas, all staging areas, and all construction access corridors in site plan view. Construction and staging zones shall be limited to the minimum area required to implement the approved project, and to minimize construction encroachment on the beach and intertidal areas, among other ways by using blufftop areas for staging and storing construction equipment and materials. The Construction Plan shall also identify the type and location of erosion control/water quality best management practices that will be implemented during construction to protect coastal water quality.

**Modification #103. Add the following to Appendix A: Shoreline Inspection Checklist and on Page III-35 of the IP:**

17.20.20.O Sand Grooming. The City shall undertake sand grooming activities to camouflage existing revetments and accommodate public access in accordance with the following provisions:

- (a) All sand grooming activities shall be completed prior to Memorial Day, or as soon after as possible, and shall be timed and conducted in a manner that minimizes impacts to beach recreation.
- (b) Sand grooming shall only take place if there is enough sand available to cover the existing revetments without diminishing the area of beach available for public access and recreation.
- (c) Bulldozed areas shall be smoothed over at the end of each day to prevent creation of large sand berms that restrict or interfere with public access along Carmel's beach. The City shall avoid over-excavating the beach berm, and use the minimal amount of sand necessary to cover existing revetments.
- (d) The City shall provide adequate personnel, and, where necessary, install temporary construction fencing, to protect public safety and minimize impacts to recreation during beach grooming activities.
- (e) All construction equipment and temporary fencing shall be removed from the beach daily, and immediately upon completion of beach grooming events.

**Modify the existing text on page 9 – 18 of the SMP as follows:**

Sand Redistribution

Inspection and Maintenance Issues:

- Conduct sand redistribution during ~~late May/early June~~, consistent with 17.20.20.O.  
NOTE: The sand redistribution program requires ~~renewal~~ of a Coastal Development Permit ~~every five years beginning in 2005.~~



- Cover revetment with ~~at least three feet of sand~~ the minimum amount of sand necessary to cover existing revetments.

**Modification #104. Add the following to page 8 – 14 of the Shoreline Management Plan and 17.20.19 of the IP:**

## **Chapter 8: Carmel Shoreline Management Programs**

### 17.20.19 E. Shoreline Armoring Maintenance and Monitoring.

(1) Monitoring. The Permittee shall ensure that the condition and performance of existing seawalls and revetments are regularly monitored by a licensed civil engineer with experience in coastal structures and processes. Such monitoring evaluation shall at a minimum address whether any significant weathering or damage has occurred that would adversely impact its future performance, and identify any structural damage requiring repair to maintain the as-built revetment profile.

At a minimum, annual monitoring reports shall be prepared by a licensed civil engineer with experience in coastal structures and processes and shall contain recommendations, if any, for necessary maintenance, repair, changes or modifications to the existing revetment or the bedrock benches adjacent to and below it. All monitoring reports shall include photos of the structures and surrounding areas taken during low sand elevations in the winter months.

(2) Maintenance Activities. It is the Permittee's responsibility to maintain any shoreline armoring structures and all irrigation, drainage, and vegetation in a structurally sound manner and its approved state until such a time that the seawalls and/or revetments are removed or replaced. At a minimum, the permittee shall:

- (a) Rock Retrieval. Any rocks that move seaward of the as-built seawall and/or revetments shall be immediately retrieved and either: (1) restacked within the approved rock slope profile inland of the seawall; or (2) removed off the beach to a suitable disposal location. Any existing rock retrieved in this manner shall be recovered by excavation equipment positioned landward of the waterline (i.e., excavator equipment with mechanical extension arms).
- (b) Debris Removal. The Permittee shall remove all materials and/or debris that may fall from the blufftop area inland of the seawall onto the beach below.
- (c) Landscaping and Drainage Maintenance. The permittee shall maintain all upper bluff drainage, vegetation, and/or irrigation elements above seawalls and/or revetments.

**Modify the text on page 9 – 8 of the SMP as follows:**

## **2. During Storm Season**

- Inspect exposed revetments for signs of loose, perched, or migrating boulders.





ACTION: Any rock or boulders found to be loose or unstable or to have migrated away from any existing seawall or the revetment base should be ~~corrected~~ retrieved immediately and either restacked within the approved rock slope or removed from the beach to a suitable disposal location. Any existing rock retrieved in this manner shall be recovered by excavation equipment positioned landward of the waterline. If immediate repairs are not possible, document conditions photographically and schedule repairs as soon as possible.

**Modify the text on page 9 – 10 of the SMP as follows:**

**2. Rock Revetments**

All existing revetment along the Carmel shoreline include a keyway excavated into the underlying bedrock. Because the bedrock is relatively “soft” the keyway is vulnerable to damage, resulting in rock migration. Depending upon conditions, ~~two~~ three modes of repair should be considered:

1) A deeper keyway could be cut at the original location. Overlying rocks would have to be moved, then replaced after the toe rocks are re-installed; or

~~2) A new keyway could be cut seaward of the original keyway. This option would be the easiest and least expensive method of repair, but would require the use of additional rocks and consume more beach area. Care should be taken to ensure that the slope of any revetment is not too shallow, creating a ramp or platform that facilitates wave run up or overtopping. Repair existing keyway. Requires moving and replacing overlying rock, similar to 1 above.~~

3) Replace existing revetment with a vertical seawall.

**Modify the existing text on page 9 – 17 as follows:**

**Revetments**

**Inspection and Maintenance Issues:**

- Reposition migrating, perched, and/or loose boulders to maintain revetment’s design slope. \*NOTES: Pay special attention to the revetment protecting the Ocean Avenue storm water outfall. ~~A Coastal Permit is required if the repair work is extensive, widespread, requires closure of Scenic Road or would extend the revetment westward and diminish beach area. See section 9.4 for coastal permitting requirements.~~
- Rebuild revetment if the shape has been significantly altered. NOTE: Rebuilding a revetment requires a coastal permit and an evaluation of all reasonable alternatives to shoreline armoring including replacement with vertical seawalls and consideration of “soft” options.
- ~~Ensure coverage with at least three feet of sand during sand redistribution program. Camouflage existing revetments with sand pursuant to the provisions in 17.20.20.O.~~



Sand grooming shall avoid over-excavating the beach berm and use the minimum amount of sand necessary to cover existing revetments.

- Post signs to warn of dangerous conditions when revetments are exposed.
- Repair “boundary” erosion (at top and sides of revetments). Consider adding additional armor stones or other alternatives. See the Introduction section for coastal permitting requirements.
- Maintenance and Monitoring of shoreline structures shall be carried out consistent with section 17.20.19.E.

**Modify the existing text on page 9 – 18 of the SMP as follows:**

Seawalls and Retaining Walls  
Inspection and Maintenance Issues:

- Retrieve loose rock from failed seawalls during periods of low tide and low sand elevation.
- Maintenance and Monitoring of shoreline structures shall be carried out consistent with section 17.20.19.E.

**Modification #105. Modify the text on page 9 – 6 of the SMP as follows:**

2. During Storm Season

- Inspect all storm drains, gutters, grates, manholes, drop inlets, culverts, and outfalls for plugs and damage, which may interfere with water drainage systems from 4<sup>th</sup> Avenue to Martin.

ACTION: ~~Clean as necessary~~ All components of the Storm Drain System (including all storm drains, gutters, grates, manholes, drop inlets, culverts, and outfalls) shall be inspected on a regular basis and shall be maintained at least twice yearly: (1) between October 1st and October 15th; and (2) between April 15th and May 1st. Such maintenance shall include clean-out, repair, and/or replacement as necessary to ensure that the Storm Drain System effectively filters and treats runoff to remove typical urban runoff pollutants. (SEE SMP Fig. 8)

**Modify the existing text on page 9 – 21 of the SMP as follows:**

Storm Water System  
Inspection and Maintenance Issues:

- Clear debris from all storm water inlets, grates, CDS Units, and pipes prior to each storm event. All components of the Storm Drain System (including all storm drains, gutters, grates, manholes, drop inlets, culverts, and outfalls) shall be inspected on a regular



basis and shall be maintained at least twice yearly: (1) between October 1st and October 15th; and (2) between April 15th and May 1st. Such maintenance shall include clean-out, repair, and/or replacement as necessary to ensure that the Storm Drain System effectively filters and treats runoff to remove typical urban runoff pollutants.

- Modify storm drain outfalls where drainage causes shoreline erosion using boulders or other suitable material to diffuse the force of discharging water. Repair separated outfall pipe sections. NOTE: Pay special attention to Fourth Avenue perched outfall, wall, attached guardrails and pipe. Placement of any material including boulder at the toe of the bluff or on the beach requires a coastal development permit.

**Modification #106. Add the following text on Page 3-17 of the Shoreline Management Plan:**

Chapter 3: Access to the Carmel Shoreline

Development shall not interfere with the public's right of access to the sea.

**Add the following on Page 5-6 before O4-10:**

Chapter 5: Recreational Activities and Events

Restrictions on parking and traffic along Scenic Road, the Del Mar parking lot, San Antonio and the public right-of-ways west of San Antonio shall require a coastal development permit.

**Modification #107. Add the following adopted LUP policy language on page 4-17 of the SMP to the policy objective O4-6 excerpt as follows:**

Limit development along the Carmel shoreline to facilities that support passive and active recreational activities, beach access, bluff protection and protection of infrastructure. Bluff protection and protection of infrastructure shall be permitted only when required to protect existing structures that are in danger from erosion.

**Modification #108. Add the following to Page III-35 of the IP:**

17.20.20P. Retain the current portable second restroom facility at Santa Lucia Avenue. Encourage construction of one or more permanent restrooms south of Eighth Avenue, including consideration of a permanent restroom at the portable restroom location at Santa Lucia Avenue. Prohibit removal of the Santa Lucia portable restroom unless adequate permanent restroom facilities have been constructed south of Eighth Avenue.

**Modification #109. Modify text on page 4 – 2 as follows:**



## Chapter 4: The Carmel Shoreline Landscape

### North Dunes

The North Dunes represents one of the City's ~~only~~ most significant native coastal biotic communities.

**Modification #110. Delete the following from the palette of Approved Carmel Beach Bluff Pathway Plants on page 4 – 6 of Appendix A:**

~~*Myoporum laetm*~~ ————— ~~NCN~~

**Modification #111. Modify the text on page 9 – 6 of the SMP as follows:**

#### 1. Before Storm Season

- Inspect bluffs vegetated by overhanging ice plant which becomes laden with water during storms and can cause saturated bluff soils to slump.

#### ACTION

Overhanging ice plant should be ~~trimmed before each storm season~~ removed and replaced with non-invasive native plants. ~~Consider replacing some sites with alternative species.~~

**Modification #112. Modify the existing text on page 9 – 20 of the SMP as follows:**

#### Beach Accessways

##### Inspection and Maintenance Issues:

##### Vegetation

- Re-establish approved vegetation on barren slopes.
- ~~Trim~~ Remove acacia and *Myoporum* ~~to prevent encroachment into shoreline viewsheds.~~
- Remove ice plant ~~that competes with blufftop landscaping.~~

**Modification #113. Modify the existing text on page 9 – 22 of the SMP as follows:**

#### Landscape

##### Inspection and Maintenance Issues:

##### Landscape Design Plan

- Review the approved landscape plan, its design features and intended purposes with the City's shoreline maintenance staff.
- Update and document changes to the landscape plan on a regular basis. The landscape palette shall include only native, non-invasive and drought-tolerant plants.



- Remove invasive and non-native plant species and replant with appropriate non-invasive native plants where new plants are: (1) from the approved SMP Table 2 plant list for the areas inland of the sandy beach; (2) dune species endemic to the Carmel Beach area for areas on sandy beach; and (3) riparian and wetland species native to Pescadero Creek for the Pescadero Creek area.”

#### Tree Trimming and Shrub Pruning

- ~~Trim and thin~~ Remove acacia thickets to protect coastal views, deter transient activities, and prevent encroachment onto other plant habitats.

#### Aggressive, Invasive Exotic Plants

- ~~Seize opportunities to~~ Eliminate ice plant or acacia on or near bluff top; replace with species from the approved plant list that complement landscape.

### **Modification #114. Add the following on Page 6 – 3 before 6.2.2: Coastal Bluff and Dune Erosion:**

#### Chapter 6: Carmel Shoreline Erosion and Response

##### Passive Erosion

Experts generally agree that where the shoreline is eroding and armoring is installed, armoring will eventually define the boundary between the sea and the upland. On an eroding shoreline fronted by a beach, the beach will be present as long as some sand is supplied to the shoreline and the beach is not submerged by sea level rise. As erosion proceeds, the beach also retreats. This process stops, however, when the retreating shoreline comes to a revetment or a seawall. While the shoreline on either side of the armor continues to retreat, shoreline retreat in front of the armor stops. Eventually, the shoreline fronting the armor protrudes into the water, with the mean high tide line fixed at the base of the structure. In the case of an eroding shoreline, this represents the loss of a beach as a direct result of the armor.

In addition, sea level has been rising slightly for many years. In the Carmel Beach area, the trend for sea level rise for the past 25 years has been an increase resulting in a 100 year rate of nearly 1 foot per 100 years.<sup>3</sup> Also, there is a growing body of evidence that there has been a slight increase in global temperature and that an acceleration in the rate of sea level can be expected to accompany this increase in temperature. Some shoreline experts have indicated that sea levels could rise as much 3 feet by the year

<sup>3</sup> NOAA, National Ocean Service.



2100.<sup>4</sup> Mean water level affects shoreline erosion several ways and an increase in the average sea level will exacerbate all these conditions. On the California coast the effect of a rise in sea level will be the landward migration of the intersection of the ocean with the shore. On a relatively flat beach with a slope of 40:1, every inch of sea level rise will result in a 40-inch landward movement of the ocean/beach interface.<sup>5</sup> This, too, leads to loss of the beach as a direct result of the armor. These effects are also known as “passive erosion.”

**Modify the following text on Page 6 – 3:**

6.2.2: Coastal Bluff and Dune Erosion

All Coastal bluff erosion is both ongoing (i.e., long-term) and episodic. Unlike the beach sand, Carmel's coastal bluffs cannot easily be replenished by natural cycles.

**Modify the following text on Page 6 – 4:**

The best-documented episodic erosion of Carmel's coastal bluffs occurred during the El Nino storms of 1982/83.

**Modification #115. Modify the text on page 9 – 11 of the SMP as follows:**

4. Unconsolidated Material

Both the white sand beach and the fill materials will need replacement from time to time. During early summer, the Forest, Parks, and Beach Department has been responsible for contracting the City's sand redistribution program. This program involves the movement of sand from the lower beach to cover rock revetments along the upper beach and bluffs. Sand redistribution helps replace sand dragged downslope by numerous beach visitors and camouflages unsightly shoreline revetments. This activity also introduces temporary public access impacts and could lead to a disruption of shoreline habitat and loss of beach sand. ~~At present there is no practical means to replenish Carmel's white sand. Because sand from other locations will have a noticeably different appearance and texture, the importing of “outside” sand is not recommended.~~

~~While the bulldozing of beach sand during spring has not caused any noticeable problems over the past 40 years, the wintertime redistribution of this sand is not recommended. During the winter, beach sand helps absorb and buffer against the severe storm wave impact and run-up. If~~

<sup>4</sup> Gary Griggs, as quoted in “Living on the Edge; a saga of seawalls, who wants them, who doesn't, and the fate of California's disappearing coastline” by Bruce Willey (in the “Good Times,” February 27 – March 5, 2003 issue). Mr. Griggs is quoted as also indicating that some estimates show that it will be higher than three feet, some lower, but that the three feet rise by 2100 is “probably the median.”

<sup>5</sup> In other words, a one-inch rise in sea level can result in over 3 landward feet of dry sandy beach loss. For the 3 feet rise estimated by 2100, that would translate into a 120 foot landward movement of the wet-dry intersection on a beach sloped at 40:1.



~~beach sand was bulldozed farther onshore, incoming storm waves would strike the shore with more energy possibly causing greater erosive damage.~~

The City is monitoring beach profiles to better understand what, if any, impact its sand redistribution program is having on beach sand. If the results of the City's beach monitoring program indicate that the beach has been losing sand over time, the City is prepared to investigate options for beach nourishment using offshore deposits or other sources that match Carmel Beach sand to replenish the beach and protect its width.

**Modification #116. Add to the text on page 9 – 14 of the SMP as follows:**

Chapter 9.3 Beach Emergency Closure Plan

The role of the BEAC is to assess the information and circumstances causing concern for the public and possible beach closure. Typical sources of information or agencies BEAC might consult include but are not limited to any of the following:

California Coastal Commission.....831/ 427-4863

**Add to the text on page 9 – 15 of the SMP as follows:**

ACTIVATION:

If in the opinion of the BEAC the beach or parts of the beach should be temporarily closed in the interest of public safety, health, and welfare...

4. Notify the Central Coast Office of the California Coastal Commission of recommendation of the BEAC to close the beach prior to action being taken by the City to preserve public safety, health, and welfare. If it is not possible to contact the Coastal Commission prior to action, then the City shall contact the Coastal Commission immediately following action.

**APPENDIX B: Tree Worksheet**

**Modification #117. Revise Appendix B: Significant Tree Evaluation Worksheet as follows:**

Part One: Initial Screening

A. Does the tree pose an ~~above-normal potential risk~~ immediate threat to life or property?

YES \_\_\_\_

NO \_\_\_\_



California Coastal Commission

Describe in detail the nature of the threat.

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Any tree that has structural impairment that is likely to cause it to fail should be marked as unsafe and the tree should be removed. Trees that have limited and specific defects that can be remedied with selective pruning or other mitigation should be marked as safe and specific recommendations should be given to the owner for tree care. Such trees may still be assessed for significance.

#### Part Two: Assessment for tree significance

- B. Is the tree one of the following native species identified on the Carmel-by-the-Sea recommended tree list?

**[No change recommended to this section]**

- C. Does the tree meet the minimum size criteria for significance?

**[No change recommended to this section]**

For each of the criteria below assign points as shown to assess the tree. To be considered significant or moderately significant, a tree must achieve a minimum score of 4 point in each of these categories and must achieve a total score of at least 6 as shown in Part Three below. If any criteria score is zero the assessment may stop as the tree cannot qualify as significant.

D. **[No change recommended to this section]**

E. **[No change recommended to this section]**

F. **[No change recommended to this section]**

G. **[No change recommended to this section]**

#### Part Three: ~~Final Assessment~~ Tree Score and Final Evaluation

Total Score from Part Two: \_\_\_\_\_

##### **Significant Trees**

Meets size and species criteria and rates the following score on the tree assessment survey:  
4 or > points; or

Is not one of the listed species but rates the following score on the tree assessment survey:  
7 or > points

##### **Moderately Significant Trees**

Meets size and species criteria and rates the following score on the tree assessment survey:





2 – 3 points; or

Is not one of the listed species *but* rates the following score on the tree assessment survey:

4 – 6 points

### **Insignificant Trees**

Does not meet size and species criteria or if it does meet size and species criteria, rates the following score of the tree assessment survey:

0 – 1 point; or

Is not one of the listed species and rates the following score on the tree assessment survey:

0 – 3 points.

C. Are there any other factors that would disqualify a tree from a determination of significance?  
(Explain any 'yes' answer)\*

YES \_\_\_\_

NO \_\_\_\_

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\*Findings to be included in Staff Report.

Conclusion:

Does this tree qualify as a significant tree? YES \_\_\_\_ NO \_\_\_\_

Does this tree qualify as a moderately significant tree? YES \_\_\_\_ NO \_\_\_\_

## **III. FINDINGS AND DECLARATIONS**

The Commission finds and declares as follows:

### **Carmel Implementation Plan Chapter 17.2 Title, Components and Purposes**

This introductory chapter of the Carmel Implementation Plan sets out the “ground rules “ for the zoning ordinance by describing the purpose for the various governing ordinances, the organization and authority for the document, activities that are unlawful and a number of regulations relevant to procedural and substantive requirements for actions on permit applications. The chapter is generally well written and presents the information in a logical and easily understood manner. There are, however, a few sections that may present procedural problems in the future or are inconsistent with the certification requirements of the Coastal Act or companion regulations (CCR Title 14, Division 5.5, Section 13001 et seq.) These inconsistencies are discussed in the following paragraphs.



Section 17.2.6 requires that applications for permits not be filed unless the proposed project is consistent with the land use designation assigned to the site in the Land Use Plan. The ordinance, however, provides for an exception to this requirement if an application to amend the Coastal Plan is filed concurrently with the permit application that proposes an inconsistent use. This exception may present procedural problems for the City because permit applications and LCP amendments usually have different time frames for processing. Permit applications are subject to the Permit Streamlining Act and must be acted upon within 270 days (180 days plus one, 90 day maximum extension) of filing or completion of an EIR if one is required. Amendments to the LCP are not subject to the Permit Streamlining Act and can take significantly longer to be processed because they must first go through local hearings which take a minimum of six weeks (CCR Title 14 Section 13515 (c) and in reality usually take longer. Locally approved amendments must then be submitted to, and approved by, the Coastal Commission, a process that can, and often does, take several months. If the Commission approves the amendment, it must then be returned to the City for final action and then back to the Commission for final certification. This process usually requires another couple of months, particularly if modifications to the original amendment have been added. Given this situation, it is entirely possible that the City would find itself in the position of having to act on the permit application that is inconsistent with the LCP long before the amendment that might allow the project to be found consistent has been certified.

As proposed, this section of the Carmel Implementation Plan is inconsistent with the statutory requirement that the Implementation Plan is adequate to carry out the provisions of the Land Use Plan because it has the potential to allow development that is inconsistent with the Land Use Plan to be approved in order to comply with the requirements of the Permit Streamlining Act. If modified to delete this exception, thus requiring that any needed LCP amendments be obtained prior to filing otherwise inconsistent permit applications, the section will be adequate to carry out the Land Use Plan policies and designations. (Please see Suggested Modification One).

Section 17.2.9 A of the ordinance provides that any of the regulations in the Zoning Code shall not supersede any other regulations or requirements that may be adopted by the City or any other local, state or federal agency that may have jurisdiction over development authorized by the Implementation Plan. This section presents a basic conflict with the concept of a local coastal plan. The statutory scheme laid out in the Coastal Act returns Coastal Permit authority to local jurisdictions if an LCP, which provides the rules for approving CDP's, is certified by the Coastal Commission. This certified plan thus represents the cooperative effort of both the City and the Commission to establish a mutually agreed upon set of policies, land use designations and ordinances to govern development in the coastal zone. Any changes or additions to the plan likewise require the approval of both the City and the Commission. (PRC Section 30514, CCR Title 14 Section 13555.) The effect of this state and local partnership between the City and the Commission is to have one set of rules, and only one set, that apply to all development in the coastal zone. Stated differently, only those rules relevant to the processing of CDP's that are certified by the Coastal Commission are effective. The proposal that other rules relevant to development in the coastal zone may be enacted by the City or others outside of this process and would not be superseded by the certified LCP requirements is thus anti-ethical to the legislative direction on the function of Local Coastal Plans, does not serve to carry out the provisions of the Land Use Plan and in fact, could have quite the opposite effect. This is not to



say that local jurisdictions cannot have regulations apart from those included in their Local Coastal Plans. Many local regulations such as the requirement for business licenses, the keeping of pets and the like are not included in LCP's because they are not relevant to the regulation of land use in the coastal zone. Section 17.2.9 A is problematic because it seems to allow for any regulations to be adopted unilaterally, even those that cover the same subject matter and may conflict with certified land use policies and implementing ordinances. This section must, therefore be deleted from the Implementation Plan. (Please see Modification Two)

Section 17.2.10 provides that any building for which a building permit has been issued prior to the effective date of the ordinance can be completed as long as construction commences within one year and is diligently pursued. The Coastal Act requires that all new development in the coastal zone, unless specifically exempt from the permit requirement, must be authorized by the issuance of a Coastal Development Permit, either by the Commission or by the local government pursuant to a certified LCP. In order to clarify that a Coastal Development Permit as well as a building permit is required for construction, this section should be modified to state that a valid Coastal Development Permit and a building permit are needed. (Please see Modification Three)

## **Carmel Implementation Plan Chapter 17. 4: Zoning Districts Established**

This section of the Implementation Plan establishes ten basic zone districts (two residential, three commercial and five public/quasi public districts), five overlay zone districts (Archaeological, Park, Beach, Environmentally Sensitive Habitat and County annexed lots) and a zoning map for the City. The specific requirements for these zone districts are found elsewhere in the document. All property in the City is assigned to a zone district, The zone districts portrayed in the zoning map are (check when map comes in) consistent with the land use designations shown on the certified Land Use Plan map. This section of the Implementation Plan is, therefore consistent with, and adequate to carry out the policies and land use designations of the Land Use Plan and can be approved as submitted.

## **Carmel Implementation Plan Chapter 17.6 : General Rules**

This section of the Zoning Ordinance lays out the rules for how language used in the zoning ordinance is to be construed (i.e the word "and" indicates that all connected words or provisions shall apply), how various measurements (lot grades, building volumes, building areas, building heights etc,) shall be made and how zoning boundary determinations are made. The text describing how to make the various determinations and measurements is well written and augmented by useful graphics. The provisions for measuring buildings, coverage, and lot areas are consistent with the policies relevant to the construction of new commercial and residential development in the land use plan as are the rules for making determinations regarding zone district boundaries and the meaning of terms used in the ordinance. This section is, as submitted, consistent with, and adequate to carry out the policies and land use designations of the certified Land Use Plan.



## **Carmel Implementation Plan Chapter 17.8: Residential Zoning Districts**

Chapter 17.8 of the Carmel Implementation Plan identifies the four basic zoning districts within the city. It outlines the specific purposes of each zoning district, prescribes the principally permitted and conditionally permitted land uses within each zone, establishes specific limitations for each zone, and imposes the list of prohibited uses. A number of non-residential conditional uses are permitted in identified overlay zones and are generally subject to pre-existing, quasi-public uses such as senior care facilities, religious facilities, and community centers. The zoning rules are organized by district in an easy-to-reference table and appear adequate to carry out the intent of relevant Land Use Plan policies.

## **Carmel Implementation Plan Chapter 17.10: R-1 District Design Regulations**

This chapter more specifically describes the purpose and standards of the low density residential (R-1) district including dimensional standards for lot size and building sites, site development and building standards, development in a floodplain, lot mergers, review of plans, and residential design guidelines. Much of the language devoted to the purpose of the district as well as the rules for establishing minimum lot size and development density has already been evaluated and subsequently certified as part of the City's Coastal Land Use Plan. One issue area not covered in the evaluation and certification of the LUP but that in this instance appears to conflict with the policies and goals of the Land Use Plan are the standards for establishing maximum site coverage.

Section 17.10.2E of the Implementation Plan requires that prior to the sale of real property, a determination be made that the creation of the real property complies with all applicable City ordinances and the Subdivision Map Act in effect at the time of its creation. Those properties that complied with the requirements for a legal lot under local and state law, shall be issued a Certificate of Compliance. Those that did not comply with the legal requirements may be given conditional certificates of compliance, the condition of which must be satisfied prior to any action on any permit for development of the parcel. The relevant LUP policies require the adoption of standards for subdivision and creation of new lots to protect the existing subdivision and development patterns in the village and to minimize the impacts of any lot-line adjustments and subdivisions on coastal resources. These activities meet the Coastal Act definition of development and as such require the issuance of a coastal development permit. Thus, any property that did not comply with the applicable ordinances of the City or the provisions of the Subdivision Map Act at the time of its creation, shall be required to obtain a Coastal Development Permit. The City's implementing ordinance is inadequate in this respect and requires a modification to bring it into conformance with the underlying land use plan policies and state law. See Recommended Modification 4.

Section 17.10.3 B.2 of the City's Implementation Plan establishes maximum site coverage at 10% of the site area. Site coverage, as defined by the IP, is the total ground area of the site occupied by materials or improvements that covers the soil but which is outside the perimeter of primary structures that count as floor area. This includes fully permeable materials such as gravel, spaced decking, and exterior stairs, but excludes bark, wood chips, and mulch, which are not counted as site coverage. The City's definition also includes semi-permeable and



impermeable materials such as sand-set bricks or pavers, concrete, and asphalt as site coverage. Subsection a. ii of the City's standard further provides a site coverage exemption for driveways and walkways up to an additional 500 square feet if made from semi-permeable or fully permeable materials. The exemption applies to any lot regardless of size and is inconsistent with the policies of the Land Use Plan for the reasons discussed in the following paragraphs.

The purpose of placing a limit on site coverage is to minimize the amount of storm water runoff created by impermeable surfaces and secondly to provide an adequate amount of unimproved open space for natural forest regeneration. Carmel's citywide storm water drainage system relies in large part on natural drainages and the unimproved portions of its forested landscape to absorb, filter, and ultimately convey storm water to Carmel Bay. As redevelopment of the City's older housing stock continues, these natural drainages and the once abundant amount of open space are being replaced with more homes, larger in size, and with correspondingly larger amounts of non-structural site coverage. In order to stem the potential rising tide of adverse water quality impacts associated with increased development of the community, the City adopted land use plan policies that place a limit on the amount of site coverage. LUP policy P1-49 limits total site coverage (structural and other impermeable coverage) on 4,000 square foot lots to 55% (2700 sq. ft.) of the site. Policy P1-48 requires that maximum limits on site coverage and floor area be established as well as provisions for a smaller ratio of allowable coverage and floor area on larger sites to preserve open space. There are also ancillary water quality policies in the certified LUP (P5-195 and P5-208) that require new development to minimize impervious surfaces, infiltrate runoff through the soil, and efficiently manage storm water runoff. Complimentary forest management policies address site coverage impacts on the urbanized forest (P5-69, P5-60, and P5-64) and require new development to avoid encroachment within the root protection zone, be sited and designed to avoid or minimize significant adverse effects to the City's Monterey pine and coast live oak forest, and prohibit placement of impermeable surfaces within six feet of significant trees.

As proposed, zoning standard 17.10.3.B.2 does not prescribe smaller site coverage ratios on lots greater than 4,000 square feet as required by P1-48. It allows as much as 67.5% (2700 sq. ft.) of a standard 4,000 square foot lot to be covered with improvements, exceeding the 55% site coverage standard required by P1-49. And it is not consistent with the water quality and forest management policies that require new development to minimize site coverage to benefit water quality in Carmel Bay and the City's notable Monterey pine forest. Therefore, this section of the Carmel Implementation Plan is inconsistent with the statutory requirement that the IP be adequate to carry out the provisions of the certified Land Use Plan. If modified to reduce site coverage requirements on lots greater than 4,000 square feet and to scale-back the exemption for driveways (item a.ii.) on standard 4,000 square foot lots, the section will be adequate to carry out the intent of the LUP policies. Please see Recommended Modification 5.

## **Carmel Implementation Plan Chapter 17.12: R-4 District Design Guidelines**

Chapter 17.12 defines the site development and building standards in the higher density (R-4) district. Under the base density, up to 33 apartment units or condominiums per acre are



allowed, with another 11 units per acre granted as a bonus for low income and senior housing. There are approximately twenty-five R-4 zoned lots within the City of Carmel, which provide affordable housing, though this district is somewhat under utilized. Staff anticipates redevelopment of these sites as the City moves to meet its low-cost and senior assisted state housing obligations. As submitted, Chapter 17.12 is consistent with adequate to carry out the intent of the policies and land use designations of the certified Land Use Plan.

## **Carmel Implementation Plan Chapter 17.14: Commercial Zoning District**

This chapter defines the City's commercial zones and prescribes the land use regulations for each of the commercially zoned districts –central commercial, service commercial, and residential/limited commercial. The type and intensity of land use is laid-out in an easily decipherable schedule. Chapter 17.14 also more specifically describes the standards for design review, building coverage, floor area ratio, heights, setbacks, open space, landscaping, and parking. Though these standards may be adequate for commercial development within the commercial districts, they do not provide adequate guidance for residentially related development within the residential/limited commercial district.

The residential/limited commercial (RC) district is intended to be a transition/buffer zone between the intense uses of the City's commercial core and the less intense activity of the residential neighborhoods that surround it. A mix of development types is allowed in the RC district including commercial and permanent residential uses, though the development standards appear to be oriented more towards "mixed-use" development, which would allow for a much more intense use of a site than is customary for residential development elsewhere in the village. As such, there is the potential for residential development in the transition zone that would be out-of-character with the setting of the established character of RC district and the adjacent residential neighborhoods. For example, the maximum building coverage and floor area ratio for single-family residences on standard 4,000 square foot lots in the R-1 district is 45% or 1,800 square feet. By comparison, the allowable standard in the RC district is 70%. The City's standards would thus permit a single family home to be constructed on the same size lot (i.e., 4,000 s.f.) that is 2,800 square feet in size in the RC District.

The City's certified LUP contains policies (O1-10 and P1-59) that require the application of design standards to protect the established character of the transition zone. Yet, as proposed, the Implementation Plan does not adequately set standards for residential development in the residential/limited commercial district that is consistent with the intent of the certified Land Use Plan. Thus, in order to bring the IP into conformance with the LUP, the Commission recommends modification seven (7) requiring new residential development within the residential/limited commercial district to follow the residential design guidelines and the development standards identified in R-1 district (Chapter 17.10). Only as modified, shall Chapter 17.14 be found adequate to carry out the Land Use Plan policies. Please see Modification 7.

Secondly, the land use standards identified in 17.14 allow for an intensification of development in the City's commercial core, including Ocean Avenue between Mission and Monte Verde. This area was identified in the 2001 Final Report: Historic Resources Survey prepared by Kent



Seavey as having a significant number of potential contributing structures. The commercial core is also the most recognizable district in Carmel, it retains some the oldest structures in town, and it is the first thing people see as they exit highway one and make their way down through the village. The certified Land Use Plan specifically requires that the unique character and the established design context of Ocean Avenue as represented by size, scale, and architecture be protected.

*P1-63. Protect the special and unique character of Ocean Avenue and the surrounding commercial area. Ensure, through the administration of land use and design regulations, that the architecture, landscape, scale and ambience of this area is maintained.*

*P1-66. Retain the scale and variety of design established in the retail core when considering changes to buildings that are not historic. Protect, preserve and rehabilitate historic commercial architecture that represents the character, ambience and established design context of the commercial area.*

In order to protect the unique and historic character of Ocean Avenue as required by the LUP and retain the scale and established design of the commercial core, the Commission is recommending a modification to provide additional review and oversight of development within the Commercial Core by creating a Downtown Conservation District. This concept along with the suggested modification is more fully outlined in Chapter 17.20 findings below. With the above recommended modification #17 and those identified in Chapter 17.20, the City's Implementation Plan is adequate to carry out the policies of the certified Land Use Plan.

## **Carmel Implementation Plan Chapter 17.18: Public and Quasi-Public Districts**

Chapter 17.18 of the Implementation Plan establishes two public and quasi-public zoning districts within the City, including Parks and Recreation Districts and Cultural and Community Districts. Similar to Chapter 17.8 above, this chapter identifies the allowable uses for the City's parklands, theatres, senior housing centers, museums, etc., and also includes the specific requirements for development in the Theatrical District and Senior Citizen Facility District. In order to maintain the residential character and design of structures constructed in the Theatrical district, the residential development standards of Chapter 17.10 are incorporated by reference. A table of more specific development standards applicable to the Senior Citizen Facility District are outlined as well. This chapter of the Implementation Plan covers the gamut of public and quasi-public uses in existence throughout the City and is adequate to carry out the intent of the certified Land Use Plan.

## **Carmel Implementation Plan Chapter 17.20: Overlay Districts**

Chapter 17.20 of the Carmel Implementation Plan identifies five overlay zoning districts within the city and includes specific provisions for protecting the unique qualities of each district. The identified overlay districts are an Archaeological Significant (AS), Park (PO), Beach,



Environmentally Sensitive Habitat Area, and Annexed County Lots overlay district. Each overlay designation prescribes the principal boundaries and minimum standards permitted for new development. For instance, a Phase I archaeological survey is required for all new development proposed in the AS district. Good site design, a drainage plan, height restrictions, and limits on tree removal are required and imposed on new development in the Park overlay district. In both the Archaeological and Park overlay district chapters, the rules are straightforward and adequate to carry out the corresponding LUP policies and goals.

With respect to the City's implementing measures for the Beach Overlay district there are a few areas where the implementing mechanisms need to be strengthened to fully comply with the underlying LUP goals. In Section 17.20.15 Coastal Development Permit Required, the City describes development as construction, additions, design alterations, or changes in land use. Though these activities typically do trigger the need for a CDP, they are not the only activities, which may occur in the Beach Overlay District that trigger the need for a CDP. Thus, the Commission is recommending that the language be changed to simply state that all new "development" requires a CDP. (Please see suggested Modification 9). The definition of development included in the General Terms section of the IP mirrors the Coastal Act definition and thus is adequate to capture all potential development activities. Similarly, in section 17.20.16 Permit Standards, the City's standard refers to development as "proposed construction." It follows from the text of the chapter that it is development that is subject to permit standards, not just proposed construction. Thus, we are also recommending that the language be changed to reflect this.

With respect to more specific requirements of the Permit Standards, the City's stated ordinance is too vague to provide any meaningful guidance or direction for the protection of coastal resources. The standard as written states that "all proposed construction (development) shall be compatible in design with existing buildings in the area for the purpose of protecting the neighborhood character." With the exception of the beach and bluff top pedestrian path, a large portion of the Beach Overlay is residentially zoned R-1 –low density residential. The City's has adopted and the Commission certified, a plethora of Land Use Plan policies and standards protecting the character of this unique area. Thus, it is inadequate for the Implementation Plan to simply state that all construction be compatible in design with existing buildings when there are specific standards for residentially related development already established and contained in the IP. The Commission is recommending that the standard be changed to require compatibility with the R-1 design standards exhibited in Chapter 17.10 above. See modification 10C below.

There are additional areas of the Beach Overlay, Permit Standards that do not fully comply with the directives of the certified Land Use Plan specifically with respect to erosion control plans, drainage requirements and devices, prohibitions on private development needing shoreline armoring, and public access (i.e., beach parking). The Commission believes that additional clarification is needed for the standards to adequately carry out the intent of the corresponding LUP policies. Those changes are likewise shown in recommended modification 10.

During the evaluation of the City's Land Use Plan, the City indicated that there were user conflicts between residents and visitors associated with beach parking along Scenic Road. The conflicts were used as a rationale for implementing a preferential parking program designed to





allow residents and their guest's exclusive use of the 200+ public parking spaces along Scenic Road and the Del Mar parking lot during the evening. The City maintained that the beach-fronting homes did not have adequate parking for the owners and their guests and that it would be inequitable to require them to park too far from their intended destination. The City's Land Use Plan policies (O2-4, P4-43, P4-44) require all new development to provide sufficient off-street parking and likewise require the City to develop a plan to retain free public beach parking and the public's ability to access the beach. The submitted IP does not however contain any specific standards protecting public beach parking or requiring any additional parking for private development along Scenic Road.

*O2-4 Require that all new developments provide sufficient off-street parking facilities.*

*P4-43 Continue to regulate beach parking using time limits. Retain beach parking as a free resource to the public facilitating access for all. Keep public spaces along the Beach Bluff Pathway small, intimate and dispersed to avoid large congregations of people that would disturb nearby residents.*

*P4-44 Provide convenient and free public beach parking from 5:00 am until 12:00 midnight daily. Parking outside of these hours along Scenic Road and the Del Mar Parking lot shall be limited to residents and guests with a resident's parking permit.*

As such, modifications are proposed that would require all future private development within the Beach Overlay District to provide two on-site parking spaces and not disrupt the existing configuration of free public parking along Scenic Road, San Antonio Avenue, and various other street ends. As so modified, the IP will be adequate to carry out the intent of the certified LUP. (Please see suggested Modification's 10R & 12).

The final Beach Overlay comment has to do with the established boundaries and rules for development within this district. After certification, the Commission's appeal jurisdiction in many instances would extend beyond the boundaries of the identified Beach Overlay District. Not only will this require different standards to be applied to development within the appeal area, it will also add complexity to processing applications for development and any subsequent appeals. To eliminate any confusion and simplify procedures, the Commission is recommending that the Beach Overlay District be co-terminus with the Commission's appeals jurisdiction. Please see recommended modification 8.

This chapter also provides more specific guidance on development in and adjacent to environmentally sensitive habitat areas with the ESHA overlay zone. It establishes the rules for development, application requirements, acceptable qualifications of competent biologists, and the necessary contents of biological surveys. In general, the implementing ordinance is thorough and adequate to carry out the intent of the certified Land Use Plan. Though, just as it was with the Beach Overlay standards, additional clarification and sharpening of the standard is needed for it to be adequate. The ordinance requires a biological resource report that evaluates the impacts of proposed new development on the habitat values as well as proposed mitigation for any disruption or degradation of those habitat values, but does not specifically call for mapping of resources. In order to carry out the intent of the LUP, the standard should require site-specific mapping of sensitive resources prior to evaluating impacts and proposing



mitigation. The Commission has recommended a modification to the implementation standards that will bring it into conformance with the certified LCP. As modified, the implementing should be adequate to carry out the intent of the LUP. Please see Modifications 14 & 15 below.

Lastly, the Commission believes that given the guidance in the City's certified LUP regarding the special character of the Commercial Zoning district and the importance of retaining historic resources in the City's Commercial Core, a Downtown Conservation District should be established. Chapter 17.14 of the IP spells out the requirements for development within the Commercial Core, which without proposed modifications, could lead to significant alteration of the most recognizable area of the village. As noted in the findings of that chapter, the commercial core area along Ocean Avenue between Junipero and Monte Verde has one of the greatest concentrations of historic buildings in the City's small one square mile limits. The City's 2001 Historic Resources Survey identified this area as a good candidate for the creation of a historic district to preserve and showcase turn-of-the-century development in Carmel. The City's Land Use Plan policies also point to the unique character of the Ocean Avenue corridor and require it to be protected. Though, one method of preserving the established character of this area is through design regulations, it would be difficult to implement a single floor area or density standard for this area because of the varied size and scale of the existing eclectic architecture (i.e., it would create a lot of non-conformities). As an alternative, adoption of a building standard that encompasses a large percentage of existing development such as the City's recommended base floor area ratio could be combined with the creation of an overlay district to provide an additional level of review for the protection of the City's downtown historic resources. Under this scenario, all proposed alterations to both historic and non-historic buildings would require an evaluation and approval by the City's Historic Resources Board for consistency with the established design character of the downtown core. This added measure of discretionary review would ensure that the fabric of the City's historic downtown would remain intact.

Thus, in order to protect the unique character of Ocean Avenue and retain the scale and established design of the commercial core, the Commission is recommending modification's 16 and 17. These modifications establish the creation of a downtown conservation district, outlines its purpose, and establishes minimum standards for development. As so modified, Chapter 17.20 of the City's Implementation Plan is adequate to carry out the policies of the certified Land Use Plan.

## **Carmel Implementation Plan Chapter 17.22: Community Plan Districts and Specific Plans**

Chapter 17.22 is reserved for the creation of Community Planning Districts and Specific Plans. Though there aren't any specific districts outlined, the chapter defines the procedures for establishing districts based on community-wide goals and provides a mechanism for administering the plans. As correctly stated in the ordinance, establishment of a Community Planning District or Special Plans requires both Planning Commission and City Council action. The ordinance is lacking, however, an LCP amendment requirement to formally certify the change in zoning overlay. Recommended modification 18 addresses this deficiency.



## **Carmel Implementation Plan Chapter 17.28: General Site Regulations**

Chapter 17.28 defines the general site regulations and standards for a variety of activities in the City of Carmel. It establishes time limits for the use of noisy mechanized equipment, prohibits timeshare rentals within the village, and lists the City's regulations for climbing trees, composting, picnicking and camping, and burying waste within the city limits. It is very specific and adequate to carry out the intent of the certified Land Use Plan.

## **Carmel Implementation Plan Chapter 17.30: Demolitions of Structures**

Chapter 17.30 of the implementation plan establishes the rules for demolitions of structures and dwellings within the City. The standard addresses LUP policies related to the protection of community character by prohibiting demolitions of historic dwellings unless it is necessary to eliminate an immediate threat to public health and safety or where the prohibition would result in a taking of private property. This aspect of demolitions is more fully discussed in the Historic Preservation findings below. (Please see Chapter 17.32: Historic Preservation).

With respect to demolitions of non-historic resources, the Implementation Plan standard requires that an approval of demolition be accompanied by a concurrent approval for a replacement structure or dwelling. The LUP also contains policies that prohibit the creation of land use and design non-conformities through the creation of building sites (P1-36). It is Commission staff's experience that requests for demolitions of a single structure are often accompanied by development proposals for two or more structures on two or more building sites –sometimes when there is only one single lot of record. In order to ensure that there are actual legal lots of record and bring the implementation plan into conformance with the LUP policies, the Commission is recommending a modification that requires substantial evidence be submitted by the applicant or owner demonstrating the existence of two or more legal lots of record. As modified, the IP is adequate to carry out the intent of the underlying LUP policies. See recommended modification 20.

## **Carmel Implementation Plan Chapters 17.30 Demolition and 17.32: Historic Preservation**

These chapters provide standards for protecting historic resources in the City. The standards address LUP policies related to the protection of community character pursuant to Coastal Act section 30253. Historic preservation is a central component of the LCP. The LUP includes a broad array of policies that provide for the identification, preservation and enhancement of historic resources, including buildings, structures, objects, sites, districts and archaeological resources that represent the unique architectural, cultural, historic and prehistoric identity of Carmel-by-the-Sea. This includes policies to maintain an Inventory of resources (O1-14 and associated policies); incorporating historic preservation into the City's project review (O1-17 and



associated policies); and identifying and protecting archeological resources (O1-18 and associated policies). The LUP also provides for the establishment of a Historic Resources Board to administer the City's Historic Resources Program (P1-90).

Although the submitted ordinance is generally in conformance with and adequate to carry out the Land Use Plan, a few modifications are necessary to assure complete and clear conformance with the LUP requirements. First, the most important modifications are changes to the ordinances to assure protection of identified historic resources. LUP Policy P1-104 establishes two basic standards: (1) it prohibits the demolition of historic resources; and (2) it prohibits changes to historic resources that are inconsistent with the Secretary of Interior's Standards and Guidelines for historic preservation. As submitted, the IP ordinances do not adequately circumscribe proposed demolition and alteration of historic resources, as required by P1-104. In particular, as written the IP potentially conflates these two standards, which inappropriately appears to qualify the clear prohibition of the demolition of historic resources with more general "override" language to allow demolition in certain circumstances. Suggested modifications to the demolition ordinance and the ordinances related to the review of proposed alterations in part are necessary to maintain the distinction between the two distinct prohibitions that is in the certified LUP (Modification 19)

More fundamentally, with respect to the issue of proposed *demolition* of an historic resource, *preservation* of historic resources is the fundamental purpose of Historic Preservation Programs and the Secretary of Interior's standards in general, and LUP policy P1-104 in particular. Thus, demolitions must be strictly limited. There are only two "overriding" circumstances where demolition of an identified historic resource is appropriate (notwithstanding the specific LUP prohibition). The first circumstance is where there is a legitimate and identified immediate threat to public health and safety. The second situation, as with all regulatory prohibitions, is where the prohibition of the demolition of a historic resource would potentially cause a taking of private property. Both of these circumstances are contemplated by the Coastal Act, which recognizes the power of Cities and Counties to abate nuisances and the potential need for immediate response to threats to life and property (Coastal Act Sections 30005(b) and 30611); and which precludes the Commission and local governments acting pursuant to the Coastal Act from taking private property (30010).

As submitted the IP includes overly broad standards that would allow for overriding the demolition prohibition of the LUP, including a general recognition of "specific economic, legal, social, technological, or other benefits of the proposed project," as well as an allowance for a "reasonable economic return" from a property to the property owner, which do not necessarily equate to the standard of "avoiding a taking" contemplated in the Coastal Act when applied in a particular circumstance. In order to limit the proposed demolition of a historic resource to the two allowable circumstances, the general qualifying language must be struck. In addition, the general reference to providing for "reasonable economic beneficial use" and "economic return" must be modified to effectively clarify that in most situations in Carmel, maintaining an existing identified historic resource by prohibiting its demolition will still provide a feasible and reasonable economic use of the property that would not raise a concern under Takings jurisprudence.



For example, in the case of the typical historic residential building in Carmel, unless the building has been deemed a public health and safety emergency that requires its demolition, it most likely would be either habitable to begin with, or able to be renovated or rehabilitated to a habitable state without changing its fundamental historic character (see discussion below also). In either case, therefore, there will be feasible options available to maintain the existing historic resource as is, either by doing nothing, or by repairing and rehabilitating the structure.<sup>6</sup>

The City also has experience delimiting a “regulatory floor” above which it has implicitly determined that a reasonable economic use is available and feasible on residentially-zoned properties. In the City’s tree protection ordinance, for example, the City has effectively generally defined a reasonable economic use as a development that achieves “at least one-third of the base floor area allowed by the zoning applicable to the site” (see 17.48.7(B)). In the case of the typical 4000 square foot, this equates to a 600 square foot residential structure, which is one third of the allowed 1800 square foot building allowed. In other words, the tree protection standards that require preservation of significant trees must be met by a property owner as long as it is feasible to construct a house of at least 600 square feet on the site. A similar approach in the Historic Preservation ordinance will facilitate the City’s need to communicate clear regulatory standards and expectations for the protection of identified historic resources. In short, for the typical 4000 square foot lot in Carmel, the IP will establish a clear and general expectation that demolition of an historic resource is only appropriate in those rare circumstances where a public health and safety need is presented, or where it is not feasible to maintain or rehabilitate a building greater than 600 square feet.<sup>7</sup>

The remoteness that the “no demolition” standard will raise any significant conflict is underscored by the high likelihood that there will be feasible alternatives available for expanding the residential use of lots that have identified historic buildings. That is, the IP will allow for the alteration of existing historic resources consistent with the Secretary of Interior’s standards for preserving and rehabilitating historic buildings. This generally means that additions, renovations, and other alterations must preserve and be compatible with the character-defining elements of the historic house. It generally does not mean that additions or alternations would be disallowed, only that they would need to be designed in a way that is consistent with preserving the existing historic resource. Thus, for those properties where a very small historic building must be maintained pursuant to P1-104, expanded residential use on the property will more than likely be available (and be allowed by P1-104) through careful designs consistent with the general rules of redevelopment of historic buildings. Therefore, if modified to clarify the standards for demolition and alternation of historic resources, this aspect of the IP is consistent with, and adequate to carry out the LUP.

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<sup>6</sup> It is generally feasible, of course, to continue living in a habitable residential structure. Rehabilitation will also generally be feasible and in the theoretical case where repairs are so great as to be prohibitively expensive and thus not feasible, it would most likely be questionable as to whether the structure had sufficient integrity to qualify any longer as a historic resource. This situation, too, is unlikely to occur as the City has proposed standards in the LCP to guard against neglect, intentional or otherwise, of historic buildings.

<sup>7</sup> This discussion is not meant to imply that a Constitutional takings claim could not nonetheless be made in any particular circumstance, even if the ordinance requirement could be met.



Beyond the necessary clarifications related to LUP policy P1-104, numerous other minor modifications are needed to assure complete consistency with the LUP. These include:

- Modifications to assure that the Historic Resources Board is involved in all aspects of administering the Historic Preservation Program, as required by the LUP, including the ability to appeal staff level determinations of eligibility for the Historic Resources inventory, and review of proposals to alter historic resources. As modified, the general process of resource protection will rely on expert determinations in the first instance to identify resources, in order to facilitate the protection of resources; but the removal of resources will require a full Board hearing. The Board will be directly involved with the review of proposed alterations to historic resources. The IP standards do need to be modified, though, so that the burden of proof is on the applicant to show how the proposed changes are consistent with the Secretary of Interior's standards, as required by LUP policy P1-104.
- Minor modifications to assure consistency with the LUP requirements to use State and Federal Standards for Historic Preservation as a general framework, including a requirement that qualified professionals be certified pursuant to state standards; clarifying that historic buildings, not all structures, are the primary focus of the demolition prohibition; and adding the Secretary of Interior Guidelines as a appendix to the IP so that the standards for preservation and rehabilitation are well understood by the public.
- Modifications to allow other interested parties to nominate resources for inclusion in the Inventory outside of the typical development review process, based on recommendations of a qualified professional. In addition, the potential civil penalty for violation of the historic preservation requirements should be increased to provide a meaningful financial incentive to adhere to the rules of preservation. Without these modifications, protection of historic resources would not be maximized as required by the LUP.
- Modifications to provide implementation detail for inclusion of Historic Districts, not only buildings, in the Inventory, including review by the Historic Resources Board; and standards for evaluation that extend the substantive criteria of LUP for identifying resources to the District context.
- Minor modifications to clarify the correct application of the "integrity" standard for evaluation of potential historic resources, consistent with the LUP.
- Addition of an IP requirement to assure inclusion of all resources currently surveyed and evaluated, in the Carmel Inventory, consistent with LUP P1-84. Upon certification these resources will immediately fall under the protection of the Historic Preservation ordinance. The issue of actually identifying historic resources was a primary point of contention in the original failed effort of the Commission and the City to certify the LCP. In an effort to resolve this issue, the City has been undertaking a comprehensive and updated survey of historic resources and is close to completing the first official Inventory. As of December 16, 2003, the City had identified approximately 190 historic resources



for the Inventory (received by the Commission on December 18, 2003). Each resource on the list has been evaluated by a qualified professional, and summarized on official Department of Parks and Recreation forms. This preliminary list is being reviewed and will be finalized prior to final certification of the LCP. It is possible that some resources initially identified will not be on the finalized Inventory, and that additional resources will have been added since the December version. It also should be noted that the Inventory is meant to be a living document, and presumably new resources will be added as they are identified through the development review and public nomination processes.

- Modification to assure the regular update of the Historic Context Statement, consistent with LUP P1-85. This statement provides the primary framework for evaluating historic resources in Carmel. It is important that it be updated regularly to assure protection of newly recognized historic buildings and other aspects of Carmel's community character.
- Modifications to provide for consultation with Native American representatives when managing archeological resources, to assure adequate representation in the development review and mitigation process.
- Addition of definitions of "in-kind replacement" and "feasible" to assure that the historic resources are fully protected in the development review process as required by LUP policy P1-104.

Overall, as modified, the Implementation Plan is adequate to carry out the protection of historic resources consistent with the Secretary of Interior standards and the requirements of the certified Land Use Plan.

## Carmel Implementation Plan Chapter 17.34: Landscaping

This chapter provides standards for landscaping within the City. The standards generally address landscaping concerns related to protection of community character, water conservation, and protection of environmentally sensitive habitat. In addition to the general ESHA, community character, and infrastructure policies of the LUP, the most directly relevant LUP policies are:

*P5-159 Maintain and enhance the resource value of environmentally sensitive habitat areas in consultation with a qualified biologist and in coordination with the California Department of Fish and Game. Remove any non-native, invasive vegetation from sensitive habitats.*

*O5-37 Reduce the introduction and spread of invasive horticultural species into and within identified ESHAs. Encourage a volunteer program of citizens and property owner to participate in maintenance and enhancement of sensitive habitats. Develop a stewardship program based on the premise that resource management is a cooperative effort between the City and its citizens.*



*P1-121 Use appropriate vegetation for all public rights-of-ways. Require drought-tolerant plants for at least 75% of the commercial and residential landscaping on each development site. Require the use of native plants and/or non-invasive drought-tolerant plants adapted to the Central Coast environment in all landscape plans for new development.*

*P1-50 Establish landscape standards to preserve the urban forest of Monterey pines, Monterey Cypress, Redwoods, and Coast live oaks and encourage informal gardens using native vegetation to maintain the natural character of open spaces in the residential areas.*

The submitted ordinance is generally in conformance with and adequate to carry out the Land Use Plan with minor exceptions. First, inasmuch as water supply and conservation is a significant issue for the Monterey Peninsula and Carmel, the purpose of the landscaping ordinance should be modified to recognize this (Modification 40). Second, the requirement for a Forest Enhancement and Maintenance Plan and standards of review should cross reference the Tree and Shrub ordinance to assure consistency with those requirements (Modification 41). Third, the ordinance should clarify that invasive species are prohibited in landscaping in order to implement the LUP policies cited above (Modification 42). With these minor modifications the Landscaping Ordinance is in conformity with and adequate to carry out the certified Land Use Plan.

## **Carmel Implementation Plan Chapter 17.36: Nonconforming Uses and Buildings**

This Chapter of the Zoning Ordinance addresses lawful nonconforming uses and structures. All modern zoning ordinances provide procedures for the regulation of nonconforming land uses and structures because as zoning and planning requirements change over time, uses and structures that were either established before there were regulations or were once consistent with the relevant regulations become inconsistent, and thus “nonconforming” with current standards. It should be noted that nonconforming use and structure ordinances are only applicable to structures and uses that were initially lawfully established. These ordinances are not used to legitimize development that was illegally established in violation of existing regulations.

An example of a legal nonconforming use is the existing, small, corner grocery store that was established in a residential neighborhood long before the geographic area was zoned exclusively for single family residential use. Local planning authorities have two choices when confronted with this situation. One option is to make the grocery store “conforming” by “spot zoning” the grocery store site into a commercial zone district that allows grocery stores. In many instances however, the local planning authority will not want to retain a commercial use in a residential area indefinitely and would prefer to see the site ultimately be developed in a use (i.e., residential, in this example) that is consistent with surrounding development. In this case,





the local jurisdiction will not “spot zone” to commercial but can still balance the investment and expectation of the grocery store owner with the planning goal of homogeneous development by allowing the existing use to be retained as a “nonconforming use” in a residential zone district. Typically, nonconforming uses may be retained, but not expanded, until they are abandoned or otherwise replaced with a conforming use (in this example, a single family home). Nonconforming uses may be sold, but if the use is abandoned for a sufficient length of time, usually six months to a year, they cannot be reestablished. Some zoning ordinances provide for an “amortization” period after which the nonconforming use must be discontinued.

An example of a nonconforming structure would be the single family home that was built in 1920 and does not meet current front yard setbacks and height limits for the residential zone in which it is located. In this instance, the land use, residential, conforms to the zoning ordinance but the actual home does not because it encroaches into what is now the front yard set back and exceeds the maximum height allowed by the current district regulations for the R-1 zone. As with nonconforming uses, most zoning ordinances, provide regulations relevant to nonconforming structures that balance the needs of the homeowner to maintain the home without making immediate renovations to bring the structure into conformance and the needs of the community to ultimately achieve the planning goals for the area. Typically, ordinances allow nonconforming structures to be maintained and, in some instances, to be expanded and remodeled if the expansion or remodel does not increase the nonconformity with applicable zoning regulations. Using the example of the 1920 house, most nonconforming ordinances would allow a modest addition to the home as long as the addition did not exceed height requirements, encroach into set backs, cause the home to exceed authorized site coverage or fail to be consistent with any other zoning or planning requirements (i.e., location in ESHA, tree removal etc.) Likewise, modest remodel projects will also be permitted. If, however, extensive remodeling/additions (generally defined as 25-50% of the value of the structure) or demolition are proposed, most nonconforming ordinances will require that the entire structure be brought into conformity with current planning requirements, although many ordinances will, under certain circumstances, allow the reconstruction of a nonconforming structure as it existed if it is destroyed by an Act of God (earthquake, flood etc.) or other disaster.

The City of Carmel's proposed nonconforming use and structure ordinance is well written and consistent with similar well-crafted ordinances from other jurisdictions. The City regulations are, with one small exception, clearly laid out and provide an equitable balance between the expectations of the owners of nonconforming uses and structures and the desire of the City to fully implement their General Plan/ Land Use Plan and Ordinances. Furthermore, the City's proposed ordinance recognizes that some nonconforming uses and structures are great contributors to the character of the City and thus special efforts are made to accommodate their retention. The only modification that the Commission suggests is to Section 17.64.13, which is referenced in Section 17.36.4 B. Destruction and Reconstruction of Nonconforming Buildings and is directed to allowing the reconstruction of nonconforming buildings, presumably because they contribute to the character of the community. Section 17.34.6 B allows the reconstruction of nonconforming structures that have been at least 75% destroyed by fire or some other disaster if a use permit is obtained and if the Findings detailed in Section 17.64.13 can be made. The thrust of the Findings required by this section of the ordinance is to ensure that reconstructed nonconforming structures will generally be the same as the structure that was destroyed,



although conformance with modern building codes may be required. Section 17.64.13 B provides that the architecture and design of the reconstructed structure shall not be appreciably changed from the original. In order to carry out the goal of retaining the desirable character of the destroyed structure, size of the reconstructed structure must also be considered. The Commission therefore suggests that Section 17.64.13 B be modified to add “size” as a factor in making the required findings. If modified as suggested, the Nonconforming Uses and Buildings Ordinance of the Implementation Plan will be adequate to carry out the policies of the Land Use Plan that protect the special community character of the City of Carmel. (Please See Suggested Modification 43).

### **Carmel Implementation Plan Chapter 17.38: Off-Street Parking Requirements**

The purpose of this chapter is to provide the standards for off-street parking in the City’s commercially zoned areas. It identifies the parking requirements for all uses, projects, developments, and redevelopments. In addition to establishing the minimum parking requirements, the chapter also includes the design standards for surface and underground parking as well as the exceptions to the standards and authorization of parking in-lieu fee when on-site parking is not practical or possible. The chapter is well written and with the exception of the following two recommended modifications, adequate to carry out the intent of the certified Land Use Plan.

As noted in the “General Requirements” section, most types of development are subject to the off-street parking standards identified in this section. However, the implementation plan standard also includes a qualification that may narrow the applicability of the off-street parking requirements. Land Use Plan policy O2-4 requires that “all new development provide sufficient off-street parking.” As submitted, the implementation plan would limit the applicability of the program to new buildings or substantial replacement/reconstruction of existing buildings that equals or exceeds 50% of the construction value of the existing building. The 50% of value qualification for substantial replacement /reconstruction does not meet the intent of the LUP policy. Likewise, the new building requirement is too narrow and would not capture all potential development. Thus, the Commission is recommending a modification to include rebuilding as defined in section 17.70 of the implementation plan as adequate to carry out the intent of the stated LUP policy. Please see recommended modification 44.

Secondly, the Coastal Act definition of development encompasses many different types of activities including those that change the intensity of use of land such as parking programs. All activities that constitute development require a coastal development permit. Moreover, the certified land use plan requires that low cost visitor-serving amenities be protected, encouraged, and where feasible, provided. Carmel is one of the Central Coast’s top visitor serving destinations and parking demand in the village often outstrips supply. Inasmuch as free public parking can be considered a visitor-serving amenity, any proposed changes to the parking configuration in the streets and neighborhoods surrounding the City’s busy commercial districts, shall require a coastal development permit. There is no such stated requirement or guideline in the Implementation Plan and so a recommended modification is proposed to address this. As



modified, Implementation Plan chapter 17.38 is adequate to carry out the intent of the certified Land Use Plan. See recommended modification 45.

### **Carmel Implementation Plan Chapter 17.40: Signs**

The City has adopted rigorous standards for the design and placement of signs both in the Commercial and Residentially zoned districts. Signs are essential to the village character. The City has no street numbering system in the residential district and so signs provide a way to identify residences. Signs in the commercial district identify the many shops and boutiques that line the City's busy commercial district streets and courtyards. The purpose of the City's standards is to avoid unsightly and unnecessary cluttering of random signs. The ordinance establishes a process for obtaining review and approval of signs and gives prospective applicants some guidelines for creating an acceptable (by Carmel standards) sign. With one small exception, the chapter does not conflict with any land use policy and is in fact adequate to carry out the intent of the LUP.

Under the standards for permitting residential signs, the City's allows a "No Trespassing" sign to be erected at the property line, front gate, front door or entry point. In order to avoid any potential confusion/ conflict with respect to provision of public access in recreational areas, the Commission is recommending a further qualification that prohibits erection of No Trespassing signs within 20 feet of a public access point or recreational area. As so modified, the Implementation Plan is adequate to carry out the intent of the certified Land Use Plan. Please see suggested Modification 46.

### **Carmel Implementation Plan Chapter 17.42: Storm Water Quality**

The City of Carmel lies within the Carmel River Watershed. Numerous coastal creeks drain from this watershed into the Pacific Ocean and Carmel Bay, where popular public recreation areas exist. The California Ocean Plan designates Carmel Bay as an Area of Special Biological Significance (ASBS) from Pescadero Point to Granite Point. ASBSs are areas designated by the State Water Resources Control Board that require protection of species or biological communities to the extent that alteration of natural water quality is undesirable. Maintaining and restoring water quality throughout the Carmel watershed is necessary to protect these sensitive coastal resources.

The Commission shares responsibility for regulating nonpoint source water pollution in the Coastal Zone of California with State Water Resources Control Board (SWRCB) and the coastal Regional Water Quality Control Boards (RWQCBs). The Commission and the SWRCB have been co-leads in developing and implementing the January 2000 Plan for California's Nonpoint Source Pollution Control Program (Plan), which outlines a strategy to ensure that management measures and practices that reduce or prevent polluted runoff are implemented over a fifteen-year period. Some of these management measures and practices are best implemented at the local planning level, since they can be most cost effective during the design stage of development.



The Commission and the Central Coast Regional Water Quality Control Board (RWQCB) are both working to protect water quality in the Carmel area. The Commission has primary responsibility for protecting coastal resources, including water quality, from the impacts of development in the coastal zone. The SWRCB and RWQCBs have primary responsibility for regulating discharges that may impact waters of the state through writing discharge permits, investigating water quality impacts, monitoring discharges, setting water quality standards and taking enforcement actions where standards are violated. Given the common goal of clean coastal water quality, there are many issues where the authorities of these agencies overlap. For example, based on the need to regulate land use in order to protect water quality, the Central Coast RWQCB has provided guidance and comments on the development of the Monterey Peninsula Phase II Stormwater Permit (Phase II Permit) for land use development that may impact water quality. The Carmel LCP reflects this guidance with some modifications due to site-specific conditions in Carmel and the additional requirements of the Coastal Act.

Commission staff has worked closely with the Central Coast RWQCB to ensure that Water Quality Provisions within Coastal Development Permits and Local Coastal Plans are supportive and complimentary to Phase II permit requirements. The proposed addition of Chapter 17.43 to the Carmel LCP reflects the coordinated efforts to link Coastal Commission Local Coastal Planning responsibilities with RWQCB discharge requirements. Specifically, Chapter 17.43 supports the implementation of the design standards outlined in Attachment 4 of the Phase II Permit, including adopting development-specific design standards (17.43.7), sizing of treatment controls (17.43.6C), and protection of slopes and natural drainage areas (17.43.6D & 17.43.3B).

Two important differences do exist between the Carmel Water Quality Protection Ordinance Chapter 17.42 and the activities required for the Phase II NPDES permit. First, Attachment 4 of the Phase II Permit requires the Design Standards to be followed for “discretionary development” projects within one of seven categories.<sup>8</sup> The Carmel Water Quality Protection Ordinance Chapter 17.43, similarly defines “Development-Specific Design Standards” (17.43.7) where additional water quality design elements must be applied. However, unlike Attachment 4 of the Phase II NPDES permit, Chapter 17.43 identifies a minimum set of Site Design and Source Control measures which should be integrated into all development regardless of size. This distinction is important for two reasons, 1) it reflects the special significance of coastal development on coastal water quality and supports the premise that all development has the potential to impact water quality but can be mitigated using simple cost effective site design principles (e.g., limiting impervious surfaces, maximizing on-site infiltration), and 2) in Carmel, most future development will be redevelopment projects which would not be addressed by any of the 7 discretionary development project types.

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<sup>8</sup> Development categories which trigger the use of the Attachment 4 Design Standards include 1) Single-Family Hillside Residences, 2) 100,000 Square Foot Commercial Developments, 3) Automotive Repair Shops, 4) Retail Gasoline Outlets, 5) Restaurants, 6) Home Subdivisions with 10 or more housing units, 7) Parking lots 5,000 square feet or more or with 25 or more parking spaces and potentially exposed to stormwater runoff.



The second important difference between the requirements outlined in the Carmel Water Quality Protection Ordinance Chapter 17.42 and the requirements of the pending Phase II permit for Carmel is that based on criteria adopted by the State Water Resources Control Board, Carmel initially does not have to comply with Attachment 4 of the Phase II Permit. During the first 5 years of the Phase II program the SWRCB has required only municipalities subject to high growth or serving populations of at least 50,000 people to comply with Attachment 4. Municipalities like Carmel are still required under Phase II to have a “Post Construction Storm Water Management” program, however the specific requirements are not well defined.

The development requirements for the protection of water quality within the Water Quality Protection Ordinance exceed those being required in the City of Carmel's initial Phase II permit submittal. However, all municipalities are required under Phase II of the federal stormwater regulations to “Use an ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects to the extent allowable under State or local law. For those Small MS4s described in Supplemental Provision E below, the requirements must at least include the design standards contained in Attachment 4...”. The Water Quality Protection Ordinance meets this definition. The SWRCB addresses conflicts between the Phase II permits and local ordinances by stating, “Those that must comply with Attachment 4 shall have a program that is at least as stringent as that contained in the Design Standards in Attachment 4.”<sup>9</sup> While Chapter 17.43 exceeds the initial requirements of the Carmel Phase II Permit, the Chapter is consistent with Attachment 4 and meets the objectives described in the Carmel LUP.

#### a. Land Use Plan Policies

The Commission recognizes that new development in the Carmel area has the potential to adversely impact coastal water quality through the removal of native vegetation, increase of impervious surfaces, increase of runoff, erosion, and sedimentation, introduction of pollutants such as petroleum, cleaning products, pesticides, and other pollutant sources, as well as effluent from septic systems. Section 30231 of the Coastal Act states that:

*The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

New development often results in an increase in impervious surface, which in turn decreases the infiltrative function and capacity of existing permeable land on project sites. The reduction in

<sup>9</sup> Phase II Small MS4 General Permit Questions and Answer Document  
(<http://www.swrcb.ca.gov/stormwtr/smallms4faq.html>)



permeable surface therefore leads to an increase in the volume and velocity of stormwater runoff that can be expected to leave the site. The cumulative effect of increased impervious surface is that the peak stream discharge is increased and the peak occurs much sooner after precipitation events. Changes in the stream flow result in modification to stream morphology. Additionally, runoff from impervious surfaces results in increased erosion and sedimentation.

Further, pollutants commonly found in runoff associated with new development include:

- petroleum hydrocarbons such as oil and grease from vehicles;
- heavy metals;
- synthetic organic chemicals including paint and household cleaners;
- soap and dirt from washing vehicles;
- dirt and vegetation from yard maintenance;
- litter and organic matter;
- fertilizers, herbicides, and pesticides from household gardening or more intensive agricultural land use;
- nutrients from wastewater discharge, animal waste and crop residue; and
- bacteria and pathogens from wastewater discharge and animal waste.

The discharge of these pollutants to coastal waters can cause cumulative impacts such as:

- eutrophication and anoxic conditions resulting in fish kills and diseases and the alteration of aquatic habitat, including adverse changes to species composition and size;
- excess nutrients causing algae blooms and sedimentation increasing turbidity, which both reduce the penetration of sunlight needed by aquatic vegetation that provide food and cover for aquatic species;
- disruptions to the reproductive cycle of aquatic species;
- acute and sublethal toxicity in marine organisms leading to adverse changes in reproduction and feeding behavior; and
- human diseases such as hepatitis and dysentery.

These impacts reduce the biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes, reduce optimum populations of marine organisms and have adverse impacts on human health.

The goal of the LUP water quality policies is to protect and enhance water quality and the beneficial uses of local coastal waters and ground waters from adverse impacts related to land development. The objectives of the policies are three-fold:

- Protect, enhance and restore wetlands, streams, and groundwater recharge areas.



- Promote the elimination of pollutant discharge, including nonpoint source pollution, into the City's waters from new construction and development through site planning, environmental review and mitigation, and permit conditions of approval.
- Promote Best Management Practices to limit water quality impacts from existing development, including septic system maintenance and City services.

The LUP contains several policies to meet the goal of protecting and enhancing water quality and the beneficial uses of local coastal waters and ground waters from adverse impacts related to land development. Several policies provide specifically for the requirement of Best Management Practices (BMPs) related to siting and design of the project, the construction phase of the project, and the post-construction phase of the project. The water quality policies in the LUP (G5-7) include requirements for the siting, design, and maintenance of new development to prevent or minimize impacts to water quality. Additional policies (O5-46) require Best Management Practices to mitigate any impacts which cannot be controlled using site design and source control methods.

These policies contained in the Carmel LUP provide for the protection and enhancement of water quality and the beneficial uses of local coastal waters and ground waters from adverse impacts related to land development.

b. Local Implementation Plan Provisions

The Carmel Implementation Plan Chapter 17.42 (Stormwater Quality and Utility) identifies the methods by which the city will implement a Stormwater protection program. This section sets up the mechanisms the city will undertake to protect water quality "from entering the storm drain system." The section outlines the activities under the authority of the Public Works Director that are necessary to maintain the City's stormwater and drainage infrastructure and provides the director the authority to enforce those provisions when violated.

Chapter 17.42 identifies the City's authority to review new development and determine if Best Management Practices are necessary to "control the volume rate and potential pollutant load" of stormwater runoff from new and redevelopment projects. However, there is no process for the review of site design and source control BMP as required by Section O5-46 of the LUP for all development. In addition, there are no guidelines on how to determine if BMPs are necessary or what criteria will be used to determine if water quality has been protected.

*O5-46 Use alternative buildings designs, which improve filtration of water through landscaping and natural areas. Ensure that all development includes appropriate water quality Best Management Practices.*

Under state planning law and the California Environmental Quality Act (CEQA), the planning department is responsible for evaluating new development and redevelopment projects,



therefore Planning has a key role in implementing Post-construction runoff control measures<sup>10</sup> and the water quality protection procedures within the LCP. To meet the objectives of sections G5-7, O5-46, and P5-194 of the LUP, the Implementation Plan must be expanded significantly and the review of “new development and redevelopment” (Chapter 17.42 Subsection 2.D.1.b) should be placed under the authority of the Planning Director. See recommended modification 30.

*G5-7 Minimize Storm Runoff.*

*P5-194 Integrate storm water quality protection into construction and post-construction activities at all development sites. Evaluate the ability of each site to detain storm water runoff and require incorporation of detention facilities or other controls as appropriate. As part of site approval or as a condition of a tentative map, require permanent storm water pollution control measures or systems and an ongoing maintenance program, as necessary.*

With the suggested modification (Mod # 49), the Water Quality Protection Ordinance (Chapter 17.43) will ensure that all development is evaluated for potential adverse impacts to water quality and meet the objectives of sections G5-7, O5-46 & P5-194 of the LUP. The Water Quality Protection Ordinance defines what activities new development must undertake to protect water quality and outlines what applicants should consider regarding Site Design, Source Control and Treatment Control BMPs in order to prevent polluted runoff and water quality impacts.

Chapter 17.43 requires the development and submittal of water quality plans that incorporate site design modifications and BMPs designed to prevent or minimize impacts to water quality. There are two plans outlined in this ordinance with specific objectives for the protection of water quality. Plans detailing how stormwater and polluted runoff will be managed or mitigated will be required for all projects that require an Erosion and Drainage Control Plan. The basic design elements for all projects will demonstrate how the project will use appropriate Site Design and Source Control BMPs to minimize adverse effects of the project on water quality. For certain categories of development a Water Quality Mitigation Plan will be required showing how Treatment Control (or Structural) BMPs will be used (in addition to Site Design and Source Control BMPs) to minimize the discharge of polluted runoff from the project. Projects which fail to adequately protect water quality using site design and source control BMPs shall be required to complete a Water Quality Mitigation Plan

The Water Quality Protection Ordinance also provides Development Standards, which specify BMP selection methods and sizing criteria, requirements for development on steep slopes, and standards related to specific types of development (i.e., commercial, restaurants, etc.).

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<sup>10</sup> County of Santa Barbara Storm Water Management Program 2003





These plans, developments standards, and other provisions of the Water Quality Protection Ordinance are necessary to implement the water quality policies of the LUP. The implementation of this ordinance will ensure that all development is evaluated for potential adverse impacts to water quality and that applicants consider Site Design, Source Control and Treatment Control BMPs in order to prevent polluted runoff and water quality impacts resulting from the development. The Commission staff finds that with the addition of the provisions of Chapter 17.43, the Carmel IP will conform to and be adequate to carry out the water quality protection policies of the Carmel LUP.

## **Carmel Implementation Plan Chapter 17.44: Subdivision and Lot-Line Adjustments**

This section of the Carmel Implementation Plan contains the regulations for new land divisions and lot line adjustments between existing lots of record. The subdivision of the City was largely completed during the first part of the last century and thus there are very few parcels large enough to be further divided. Lot line adjustments do however occur with some frequency as old parcel lines are revised to accommodate new ownerships and new development. The basic regulations governing land divisions and lot line adjustments are found in the Subdivision Map Act (Government Code Section 66410 et seq.) Local jurisdictions may augment the provisions of the statute for local implementation but may not provide contrary direction. The Carmel ordinance is consistent with this limitation as it adds requirements for the contents of an application for a land division or lot line adjustment (Section 17.44.2), a hearing process (17.44.4 and 5) and standards for reviewing applications (Section 17.44.3.).

Section 17.44.2 sets out the requirements for submitting an application to divide or adjust land. With one exception, these requirements are complete and will ensure that adequate information for a thorough analysis of the proposal is provided. The inclusion of a requirement to identify all easements, deed restrictions or other instruments controlling the use, rights or ownership of the subject property is particularly useful and ensures that earlier limitations on property to protect open space, archaeological resources, public access and the like will not be overlooked in the review of the project. One important bit of documentation is, however, missing from the list of filing requirements. Because only legal parcels may be divided or adjusted, the application filing requirements should also include evidence that the parcel or parcels that are the subject of the proposed adjustment or division were legally created. With this addition, this portion of the ordinance will be adequate to carry out the policies of the land use plan and be consistent with the requirements of the map Act. (Please see Suggested Modification 50).

Section 17.44.3 lays out the standards and criteria by which proposals for new land divisions and lot line adjustments are evaluated. Section 17. 44.3 A requires that subdivisions and lot line adjustments must not increase or create a zoning non-conformity and must meet the *minimum* standards established for the zoning district in which the property is located. Land divisions and lot line adjustments in the Coastal Zone must not only meet minimum zoning district standards such as parcel size but because they are development as defined in the Coastal Act, they must also be consistent with the all of the policies and implementing ordinances of the certified Local Coastal Plan. Suggested Modification 51 adds this requirement to Section 17.44.3 A. As



modified this section of the implementation plan is adequate to carry out the requirements of the land use plan. The Section must also be modified to affirm that only legal lots may be further subdivided or adjusted. (Please see Suggested Modification 51)

Section 17.44.4 addresses the approval process for land divisions and lot line adjustments. This section requires that all land divisions and lot line adjustments that result in an additional buildable parcel must obtain Coastal Development Permits inferring that other divisions and lot line adjustments need not be subject to the Coastal Development Permit process. The Coastal Act, in Public Resources Code Section 30106 defines “all divisions of land” (except those for public recreation purposes) and “lot line adjustments” as development. PRC Code Section 30600(a) requires that all new development proposed in the Coastal Zone obtain a Coastal Development Permit. The Land Use Plan provides policies for the regulation of all new development in the City. It is therefore necessary that all new development undertaken pursuant to the certified LCP obtain a Coastal Development Permit unless it is exempt under one of the subsections of PRC 30610. Land divisions and lot line adjustment, even those that do not result in an additional buildable lots, are not among these statutory exemptions and thus are subject to the permit requirement. If Section 17.44.4 is revised to eliminate the exemption for certain land divisions and lot line adjustments, then this portion of the ordinance will be adequate to carry out the provisions of the Land Use Plan and will be consistent with the permit requirements of the Coastal Act. (Please see Suggested Modification 52)

## **Carmel Implementation Plan Chapter 17.48: Trees and Shrubs.**

This chapter provides standards for protecting trees and shrubs within the City. The standards generally address the need to preserve the natural beauty of the City’s urbanized forest, and maintain the extent and health of the dominant Monterey Pine forest. The LUP protects trees and the urban forest character of Carmel through a wide variety of community character and urban forest protection policies, including the establishment of a Forest and Beach Commission and a City Forester position to regulate tree removal. Some of the most important LUP policies include:

*P1-27 Continue to ensure that development, whether commercial or residential, does not diminish the village character by excessively blocking important public or private views and disturbing natural topography, mature trees, or native growth.*

*P1-44 Prohibit the removal of significant trees (as determined by the City Forester) unless it would prevent a reasonable economic use of the site or pose a threat to health and safety. Locate buildings and other site structures to avoid removal and pruning and otherwise minimize damage to existing significant trees. Avoid impacts to trees by avoiding/ minimizing impacts to the root protection zone identified by the City Forester during the preliminary site assessment. Establish continuity of landscape elements throughout each neighborhood. Replace trees removed for construction with appropriate trees of the urbanized forest. Require that they be nurtured until well established.*



P1-45 All demolitions, rebuilds, remodels, and substantial alterations shall be consistent with the following findings: *The development does not require removal of any significant trees unless necessary to provide a viable economic use of the property or protect public health and safety. All buildings and structures will be setback a minimum of 6 feet from significant trees.*

P5-58 *Maintain, restore and enhance a predominantly indigenous forest of native Monterey pines and coast live oaks.*

P5-59 *Avoid encroachment within the root protection zone of significant trees. Removal of significant live Monterey pine trees to facilitate residential development is prohibited unless necessary to provide a viable economic use or protect public health and safety.*

P5-64 *New development shall be sited and designed to avoid or minimize significant adverse effects to the forest. Avoid projects that significantly increase building footprint to the detriment of trees. No grading, compaction of soils, construction of building walls or placement of impermeable surfaces within six feet of trees classified as significant shall be permitted.*

The submitted ordinance is generally in conformance with and adequate to carry out the Land Use Plan. This includes ordinances prohibiting the removal of significant trees (17.48.7B) and requiring that all “compaction of soils, construction of building walls, or placement of impermeable surfaces” be setback a minimum of six feet from all significant trees (17.48.11A (3)). However, a few minor modifications are necessary to address the LUP requirements. First, a minor, non-substantive language clarification is need to section 17.48.3 concerning “exemptions” to avoid confusion in implementation. Second, in addition to allowing removal of trees that pose a danger to human health, the section addressing the removal of trees without adequate posting needs to be clarified so that only a threat to physical property from trees, not simply a “loss,” is a basis for such removal (Modification 54).

Third, the standards addressing removal of significant trees (17.48.7) need to be clarified through minor grammatical change that the land area within six feet of a significant tree is to be included in the assessment of whether sufficient space exists on a residential building site. That is, even though the general LUP rule is that no development should occur within six feet of a significant tree, this area should nonetheless be considered for development, short of removing a tree, if there is no way otherwise to avoid a takings of private property, and if such encroachment is appropriately mitigated (other sections of the ordinance provide for this). In addition, in the same section, the finding that use of a variance to avoid tree removal is “inappropriate” needs to be qualified so that it is clear that this means only significant inconsistencies with other requirements of the LCP would potentially override the need to protect significant trees (Modification 55).



Fourth, the policy for replacement of trees needs to be amended to assure that a significant population of native Monterey pine and coast live oaks are maintained on a City-wide basis, consistent with the LUP requirements, and to assure that only native Monterey pine stock is used. Genetic contamination of the native Monterey pine population on the Monterey peninsula is an on-going concern, and special attention needs to be paid to not importing non-native stock into the area (Modification 56).

Finally, the submitted ordinance directs the City Forester to remove all dead trees and shrubs from public property. While this may be generally appropriate, the Monterey pine ESHA areas in Pescadero Canyon and Mission Trails Park need to be excluded from this general directive. It may be important to leave dead and dying trees in these protected areas in order to maintain and protect the natural functioning of these ESHAs. Other ESHA protection policies, or if necessary, public nuisance sections of the Tree and Shrub ordinance, are the appropriate policies to govern tree removal in ESHA (Modification 57). With these minor modifications the Tree and Shrub ordinance is in conformity with and adequate to carry out the certified Land Use Plan.

### **Carmel Implementation Plan Chapter 17.52 Permit Procedures**

Chapter 17.52 of the Carmel Implementation Plan is the section of the zoning ordinance that provides the regulations for processing Coastal Development Permits in the City and also describes the various exemptions from the Coastal Development Permit (CDP) requirement as stated in the Coastal Act and the Commission's regulations. Local Coastal Plan permit and exemption procedures must be consistent with the permit and exemption provisions of the Coastal Act (Public Resources Code Section 30000 et seq.) and the companion regulations (California Code of Regulations, Title 14, Division 5.5 ,Section 13001 et seq. ) Although many other sections of the statute and the regulations apply to the permit process, Sections 13560 through 13574 of the Commission's regulations offer specific guidance on the minimum requirements for local CDP procedures and Sections 13250 through 13253 specifically address the exemptions to the CDP requirement found in the Coastal Act. In general, the Carmel ordinance is consistent with the parallel provisions in the Coastal Act and the regulations, however, in some instances needed provisions are missing, others are mis-stated and some of the proposed exemptions are not included in those allowed under the terms of the Coastal Act.

Chapter 17.52: Description of the Sections: This portion of the ordinance outlines the various topics included in this chapter (Public Hearings, Use Permits etc.) Most of the items that are typically included in an ordinance dealing with permit procedures are included, however, a few key provisions are missing. As proposed, the ordinance does not state a purpose, does not describe the requirement for CDPs and does not provide for Commission review of certain easements. The purpose section of an ordinance is important because it states the reason for the particular section, in this case, the purpose is to provide the regulations for processing CDP's in a manner that carries out the intent of the City's LCP. Provisions for the requirement for a CDP is needed because they define the type of development that needs a CDP, the City's jurisdiction over CDP's, and when a CDP must be issued by the Coastal Commission rather than the City. Finally, the Commission regulations provide for review of public access and open



space or conservation easements attached to locally approved CDP's by the Executive Director of the Coastal Commission (CCR 13574). As revised to include these provisions, the "Description of the Sections of Chapter 17.52 " will be adequate to carry out the policies of the land use plan and with the applicable Commission regulations for the content of Implementation Plans. (Please see Suggested Modifications 58, 59, and 60)

Chapter 17.52.2: Development Applications : Section 17.52.2 A of the ordinance requires "any development activity subject to discretionary review and approval" must file an application seeking that approval. The term that triggers the need for a permit, "activity subject to discretionary review" is not defined and may not include all development as defined in the Coastal Act. In order to avoid confusion and ensure consistency with the Coastal Act requirement that in order to certify and transfer CDP authority to a local jurisdiction, the jurisdiction must agree to process CDP's for all coastal development that is subject to the permit requirement, this section must be modified to state that any development, as defined in Section 17.70.2, that is not otherwise exempt from the CDP requirement must apply for a permit. As modified, this section is consistent with the requirements of the Coastal Act for processing new development and is, thus, adequate to carry out the policies of the certified Land Use Plan. (Please See Suggested Modification 61)

Section 17.52.2.D of the ordinance outlines the time limits for processing permits under the Permit Streamlining Act. It is appropriate to include this information in the ordinance because a Coastal Development Permit is considered a " development permit" under the PSA thus triggering the time limits set out in that statute. Failure to meet the time limits laid out in the PSA may result in loss of jurisdiction over a project and the automatic approval of a project. Sections 17.52 D (1) and (2) accurately summarize the PSA provisions for filing of applications and mandatory action time limits for projects that are either exempt from CEQA or subject to a Negative Declaration. Section 17.52.D (3) however purports to limit the amount of time it can take to prepare an Environmental Impact Report but does not state how much time the City has to act on a project once the EIR has been prepared and certified. The PSA provides that once the EIR is certified, then the local jurisdiction must act on the project within 180 days unless the time for preparation has been extended. If the one year time limit for the preparation and certification of an EIR has been extended (the maximum extension is 90 days) the City must act on the project within 90 days of certification of the EIR. (Government Code Section 65950(a) (1)) Therefore, in order to observe the action time limits for development for which an EIR has been required so as to avoid losing jurisdiction, this section of the ordinance must be revised. Please see Suggested Modification 62 to 17.52.2.D to require action on a project within 180 (or 90) days of certification of its EIR .

Section 17.52.3 Duties and Powers of the Director: This section of the zoning ordinance details the duties and responsibilities of the City Planning Director. Section 17.52.3 E states that one of the duties of the Director is to determine the applicable procedural path for a proposed project and whether the project is appealable to the Coastal Commission. This section provides an appeal process for the Director's determinations regarding Coastal Development Permits by stating that the decision may be "appealed in compliance with Chapter 17.52 Appeals and California Code of Regulations Section 13569." Chapter 17.54 rather than 17.52 deals with



appeals but does not contain any specific direction for appealing these types of decisions regarding how a permit will be processed and thus it is unclear why it is referenced in this section. The reference to CCR Title 14 Section 13569 is appropriate because that regulation contains a specific procedure for challenging a determination on how to treat an action on a CDP for processing purposes. If revised to delete the ambiguous reference to 17.52 Appeals, this section of the ordinance will provide a clear process for resolving challenges to the Director's decision and will be adequate to carry out the policies of the certified Land Use Plan in the event of a dispute. Please see Suggested Modification 63.

Section 17.52.6 Development Excluded from Coastal Permit Requirements The Coastal Act (PRC 30610 and 30106) and the Regulations CCR 14 Sections 13250 through 13253 exempt certain types of development from the Coastal Development Permit requirement. Development exempted from this requirement is minor in nature and, as limited in the regulations, has virtually no potential for causing any adverse impacts on coastal resources. The Carmel Implementation Plan therefore appropriately includes a section to provide for these exemptions, however in some instances the exemptions do not completely parallel those allowed in the Coastal Act and by the Commission Regulations. If revised to be consistent with the exemptions allowed by the statute and companion regulations then the section will be adequate to carry out the certified Land Use Plan by ensuring that all development that is not specifically exempted will be processed as a CDP. Please see Suggested Modification 64. The Commission notes that if the City would like to exempt development that falls outside the exemptions in the Coastal Act, the Council may wish to pursue a Categorical Exclusion for these types of projects as the current Categorical Exemption will expire upon certification of the LCP (CCR 14 Section 13249 (b)).

Section 17.52.7 Public Hearings: This section of the ordinance generally requires that all development proposals that are appealable to the Coastal Commission must be the subject of a public hearing. An exception is made for projects that are consistent with the LCP, require only an administrative approval and will not either individually or cumulatively result in adverse impacts on coastal resources. Consistent with Section 30624.9 of the Coastal Act, public hearings for these types of projects can be waived if no member of the public, after proper notice, requests a hearing. The Carmel ordinance is mostly consistent with the provisions of the Coastal Act, however, the notice provision (17.52.7.C.1) for projects of this type fails to meet minimum standards because it relies on the noticing requirements for Non-Appealable development (Section 17.52.14). The fact that some appealable development may avoid the requirement for a public hearing does not make the development non-appealable and therefore notice for all appealable development must be according to Section 17.52.13 which outlines notice requirements for appealable projects. As revised to provide for the correct notice procedure, this section of the ordinance is consistent with Coastal Act provisions and will be adequate to carry out the certified Land Use Plan. Please see Suggested Modification 65)

Section 17.52.7.C. 2 which states "No request for public hearing is received by the City within 10 calendar days from the date of the City sending the notice" (emphasis added) must also be revised because it is inconsistent with the statutory provisions for waiving the hearing requirement which provide a different time period as follows PRC Section 30624.9 (b) (2) as follows; " No request for a public hearing is received by the local government within 15 working



days of sending the notice pursuant to paragraph (1). (emphasis added) . Please see Suggested Modification 65.

Section 17.52.8: Final City Action on Coastal Development Permits: This section of the ordinance outlines the procedure for notice from the City to the Coastal Commission and interested parties of the City's final action on a CDP and also provides for notice in the event the City fails to act on a CDP within the time limits of the Permit Streamlining Act. This section is generally consistent with the applicable requirements but Section 17.52.8 A should be clarified to state that the City will not notify the Commission of their final action until all local appeals or appeal periods have been exhausted as required by CCR 14 Section 13570. This clarification is needed in order to avoid the confusion of having the Commission start an appeal period on an item that is subsequently appealed locally. The section should also be revised to include a description of the contents of the notice of final local action pursuant to CCR14 13571. With these small revisions, this section is consistent with the Coastal Act and Commission regulations for the orderly notice of final local actions on a CDP. Please see Suggested Modifications 66 and 67.

Section 17.52.13 Notice of Public Hearing: This section of the ordinance provides the noticing regulations for permit items that require a public hearing. Although not stated in the section, these requirements will also apply to appealable CDP's. A clarification to this effect should be added as the Commission's regulations require local governments to have specific notice for this type of development (CCR Title 14 Section 13565 gives the minimum requirements). Please see Suggested Modification 50. Section 17.52.13.A.2 "Contents of Notice" is deficient because it does not provide for a statement that the project is in the Coastal Zone, does not outline the procedures for filing local or Coastal Commission appeals and does not specify whether any local appeal fee is charged as required by Section 13565 (1) and (7) of the Commission's regulations for local notice. The ordinance is also inconsistent with Section 13565 regarding who is noticed. The regulations require that all property owners and occupants within 100' of the perimeter of the subject parcel must receive notice. The City ordinance limits notice to occupants to only those who occupy parcels contiguous to the subject property. (Section 17.52.13.B.6) If revised to include all required information in the notice and to provide notice to occupants consistent with the regulations, this section of the ordinance will be consistent with the applicable requirements. Please see Suggested Modifications 68.

Section 17.52.14 Notice of Non Appealable Development: This section of the ordinance provides the notice requirements for projects that are not appealable to the Coastal Commission and may, or may not, be subject to a public hearing. As with the previous section on notice of appealable items, this portion of the ordinance is inconsistent with the minimum standards found in section 13568 of the Commission regulations. Section 13568 (a) (1) (3) and (6) require that notice shall be published in the newspaper if the item is to be heard by the Planning Commission, notice shall be given to property owners within 300' of the subject property and the notice shall contain a statement that the project is in the Coastal Zone. If the Carmel ordinance is revised to include these provisions then it will be consistent with the regulations cited above. Please see Suggested Modification 69. The Commission's regulations also outline the contents required in a notice of non-appealable coastal development (CCR 13568 (b)). The Carmel



ordinance relevant to the content of the notice is missing a statement of the general procedure of the local government concerning the submission of public comments (136568 (b) (6)) and a statement that a public comment period of sufficient time to allow for the submission of comments by mail will be held prior to the local decision (13568 (b) (7) ). If revised to include these statements, the ordinance will be consistent with the minimum standards for notice laid out in the Commission's regulations. Please see Suggested Modification 70.

**Section 17.52.17; Emergency Coastal Permits** This section of the ordinance authorizes the City Planning Director to issue emergency CDP's. It closely follows the format of the Commission's regulations on this subject and is consistent with the provisions for emergency permits found in the Coastal Act and regulations. The definition of "emergency" is the same found in section 13009 of the Commission's regulations. The Commission notes that the authority of the Planning Director to issue emergency permits does not extend to the authority to waive permit requirements for certain types of emergencies as laid out in Section 30611 of the Coastal Act. That authority remains with the Executive Director of the Coastal Commission.

## **Carmel Implementation Plan Chapter 17.54 Appeals**

**Section 17.54 Appeals** This Chapter of the ordinance provides for a local appeal process and for appeals to the Coastal Commission.

Section 17.54.1 identifies the appellate bodies within the City and to the Coastal Commission and requires appellants to observe the correct hierarchy of hearing bodies. For example, appeals of actions of the City Forester on an appealable CDP are made to the Forest and Beach Commission, appeals of the Forest and Beach Commission are made to the City Council, and then on to the Coastal Commission. This requirement that all local appeal options be exhausted before going to the Coastal Commission is an acceptable practice unless an appeal fee is charged. According to the Coastal Commission regulations, if a fee is charged as is the case with the City of Carmel, then a qualified appellant has the option of appealing directly to the Coastal Commission (CCR 14 Section 13573). Although this provision is stated elsewhere in the Appeals Chapter, (Section 17.54.5 D), the mandatory language of 17. 54.1 appears to require that all local appeal avenues must be taken before an item can be appealed to the Coastal Commission. If a reference to Section 17.54.5 D is added to 17.54.1 then the appearance of a conflict in requirements for appeals will be resolved and this section will be consistent with the regulations. Please see Suggested Modification 71.

Section 17.54.2 of the ordinance correctly states the types and locations of projects that may be appealed to the Coastal Commission. Section 17.54.3 of the ordinance states the grounds on which an appeal of a Coastal Development Permit must be made. The grounds stated are from an earlier version of the Coastal Act that has since been revised. The new basis for appeal is simply conformance, or lack thereof, with the certified Local Coastal Plan and the public access policies of the Coastal Act. If revised to update the grounds for appeal, this section will be consistent with the relevant provisions of section 30603 of the Coastal Act. Please see Suggested Modification 72)





Section 17.54.4 of the ordinance provides the rules for filing appeals with the various appellate bodies.

Sections 17.54.4 A 3 and 17.54.4 B 3 state that “ in no case shall a decision.....be ripe for appeal to the Coastal Commission until after the exhaustion of all local appeal processes...”. As discussed earlier, this statement conflicts with both the Commission’s regulations and with section 17.54.5 D of the City’s ordinance that allow appellants the option to appeal directly to the Coastal Commission when a fee is charged to pursue a local appeal. If revised to delete this statement, then the ordinance sections will be internally consistent and consistent with Section 13111 of the Commission’s regulations. Please see Suggested Modifications 73 and 74.

Section 17.54.4 C outlines the process for appealing items to the Coastal Commission and is generally consistent with the Commission’s regulations relevant to this procedure. A few clarifications and revisions are, however, needed for full consistency. Subsection C states that the local approval of a project will be effective on the 10th working day after the Commission has received notice from the City and a local appeal has not been filed. To avoid confusion about the end of the appeal period, this statement should be revised to indicate that the appeal period ends at the close of business, 5:00 PM on the 10th working day after receipt of an adequate local notice per sections 13570 and 13571 of the Commissions regulations. The statement regarding local appeals should be deleted because all local appeals must be exhausted before a final local action notice can be sent to the Commission (CCR, Title 14 Section 13570). Please see Suggested Modification 75. This section also limits the method by which appeals can be submitted to the Commission to personal delivery to the Commission office or sending by first class mail. The Commissions regulations do not specify how appeals are received (CCR 13111(b)) and thus the limitations imposed by the City’s ordinance are inconsistent with this regulation.

Section 17.54.8 Appeals: This section of the ordinance identifies the parties who are eligible to lodge an appeal. For decisions of the Planning Director, the City Forester, The Planning Commission, the Design Review Board and the Historic Resources Board, any aggrieved party, who so states under oath, may appeal the decision. (17.54.8A) The ordinance does not however define an “aggrieved “ party and the requirement to state one’s status under oath appears onerous and is not required by the Commission’s regulations governing appeals. If revised to include a definition of an “aggrieved“ party, specifically identify the Applicant as having standing to appeal and delete the requirements for oaths, Section 17.54.8A will be consistent with the applicable regulations. Please see Suggested Modification 78.

Subsection B relevant to appeals of City Council decisions, states that “any person, including the Applicant, any two members of the Coastal Commission, or the Executive Director of the California Coastal Commission may file an appeal of City Council action.” This provision is at odds with the requirements of the Coastal Act and the Commission’s regulations which limit appellants to aggrieved parties as defined in PRC Section 30801, the Applicant and any two



members of the Coastal Commission. If revised to mirror these limitations, the section will be consistent with the cited requirements. Please see Suggested Modification 77.

### **Carmel Implementation Plan Chapter 17.56 Restricted Commercial Uses**

In order to preserve the primarily residential village character of Carmel, Chapter 17.56 establishes numeric and size limitations for certain restricted commercial uses consistent with the underlying land use designations. The ordinance also lays out the rules for establishment, cessation, and abandonment of restricted uses. Along with jewelry stores, restaurants, and coffee houses, the City has established a limit on the number of visitor-serving hotel/motel units. The number is based on the existing mix of visitor-serving rooms and residential homes in the village. The City's certified Land Use Plan requires the City to maintain the existing balance between these uses and to establish standards that support the improvement/replacement of existing motel facilities and to enhance the aesthetic character of these uses (O4-11). The LUP also requires the City to periodically evaluate whether an appropriate balance of land uses is being maintained (P4-58). It appears from review of the ordinance, that the restricted commercial use standards are adequate to carry out the intent of the LUP policies with the possible exception of having an implementing mechanism for re-evaluating the appropriate balance of land uses. Carmel is an extremely popular visitor-serving destination and thus, it is imperative that the mix of residential to visitor serving uses be maintained. The Commission is therefore recommending a modification to the City's Implementation Plan designed to evaluate the mix of land uses and take necessary steps to preserve the existing balance of uses. As so modified, the Chapter 17.56 of the Implementation Plan is adequate to carry out the intent of the certified LUP. (Please see suggested Modification 79).

### **Carmel Implementation Plan Chapter 17.58 Design Review**

This chapter establishes the standards and procedures for conducting design review and is applicable to development within the City's residential and commercial districts. As proposed, the chapter identifies the filing requirements and submittal standards, coordination of review, noticing requirements, and design review responsibilities. It establishes a two-track design review process, which provides for expedited review of non-discretionary requests and a more thorough evaluation of discretionary items. Examples of the types of development applicable to each design review track are listed for easy reference and the bulk of the chapter is dedicated to residential design review since there are far fewer commercial sites and the vast majority of them already developed.

As envisioned, most track two developments would require a preliminary site assessment by a city planner and forester that would provide the project applicant with site-specific information to be considered when designing the project as well as to aid City planners during project review. The next step in the design review process is the design concept review. A design concept plan is submitted by the applicant for review by either the Design Review Board or Planning Commission. These review bodies evaluate each project for compliance with the City's Design Guidelines (IP Appendix C) and consistency with the General Plan, Local Coastal Program, and



all applicable provisions of the zoning code. Once an applicant has received a design review approval, the third and final step of the process is initiated. Step three is the final details review which centers mainly on the exterior treatment of the structure. A final details design plan is submitted by the applicant to the assigned review board for review and approval of the “finishing touches.” Once again the Board or Commission evaluates each project for consistency with the City’s Final Design Details guidelines (IP Appendix D). In addition to evaluating the project for consistency with the applicable design concept and final details standards, the assigned review board is required to make findings for project compliance with the City’s more general policies/standards. Prior to receiving final design review approval, specific findings must be made. The chapter concludes with the City’s enforcement title that requires development to proceed in compliance with the granted approvals. Any deviations or modifications must be approved pursuant to the requirements of the chapter.

As submitted, chapter 17.58 outlines a well-thought out process for negotiating the City’s design review procedures. The process should work smoothly for most development that can be envisioned in the commercial and residential districts. As a result, the Commission is not proposing any significant changes to the design review framework, but instead recommending appropriate modifications to address the review process for historic resources. This includes expanding the purview of the City’s Historic Resource Board to include review and approval of changes affecting historic resource as well as making recommendations to the Planning Commission and Design Review Board for projects that do not involve a historic resource within the City’s newly created Downtown Conservation District. The creation of the Downtown Conservation District along with the additional review and oversight by the HRB is intended to distinguish the unique character and attributes while protecting the general design context of the downtown’s historic commercial properties.

The first suggested modifications deal with the applicability of design review and the general requirements and responsibilities of the various review bodies. These modifications establish that design review is required for all new development, and/or for those projects that require a coastal development permit. See Recommended Modification 80.

Recommended Modification 81 routes all proposed remodels and alterations in the Downtown Conservation District through the Historic Resources Board to ensure that any approved changes are in keeping with the character of the area. Certified Land Use Plan policy P1-63 requires that the special and unique character of Ocean Avenue be protected. The LUP also requires the City to protect and preserve the historic architecture that represents the character, ambiance and established design context of the commercial area (P1-66), as well as, to retain the scale and variety of design in the retail core when considering changes to non-historic buildings. Taken together, the City is obligated to prevent any changes which may adversely affect the unique character as expressed by scale, variety of design, historic and non-historic architecture in the commercial core (i.e., Downtown Conservation District). Storefront remodels/alterations have the potential to alter the character of the commercial core and thus, an administrative approval may not be adequate to address these impacts. As submitted, the IP standards are not adequate to carryout the intent of the referenced LUP policies. To address this, the Commission is recommending modifications limiting alterations of historic resources



under the Track One Design Review process to minor alterations as defined in 17.32.15 and to require review of any storefront changes within the Downtown Conservation District by the Historic Resources Board. As modified, the Implementation Plan standards are adequate to carryout the intent of the LUP. See Recommended Modification 81.

Third, with respect to Track Two Commercial Design Review projects, the Commission is recommending minor edits to clarify that all development as defined in chapter 17.70 is subject to the coastal development permit requirements of the LCP and again requiring that all projects involving historic resources be subject to review by the Historic Preservation Board. See Recommended Modification 82.

With respect to residential design review, the submitted Implementation Plan allows Track One (ministerial) review for many types of development in the R-1 district including expanding the floor area of existing homes up to 15%. This allowance is intended to provide homeowners and builders with the flexibility to expand residences without having to negotiate the more lengthy Track Two review process. Though this standard is well intended, it may not provide the level of review necessary to protect the unique natural and built environment for which Carmel is well known. As such, expansion of floor area under Track One review may not be adequate to carry out the intentions of the policies developed in the certified land use plan. The LUP contains a whole host of policies designed to protect the character of the community. Policy P1-37 requires design review for exterior remodels that significantly affects the character or appearance of structures and sites in the R-1 district. Other policies are geared towards maintaining simplicity and modesty of design, coordinating open space, providing visual relief between buildings, protecting coastal waters, avoiding out-of-scale development, and maintaining privacy and solar access (P1-40, P1-41, P1-46, O5-43, O5-44, P1-51) to name a few. As submitted, the implementation plan standard would not prevent a significant disruption of the character elements identified in the certified land use plan. The Commission is therefore recommending that Section 17.58.4.A.1.a be modified to limit Track One Design Review of residential projects that expand the footprint or height of a structure to 10% or less above existing conditions and likewise limit the number of times a structure may be altered under this section to once only. See Recommended Modification 83. In addition, for projects that do meet the criteria for Track One review, the recommended modification also grants the Planning Commission the discretion to require Track Two Design Review if the project does not comply with other LUP goals such as maintaining visually compatibility with the surrounding area and minimizing grading and landform alteration.

Recommended Modification 84 is needed to clarify the applicability of when a site assessment is required for Track Two Design Review of residential projects. As submitted, the preliminary site assessment is required for new construction and rebuilding, though there are other development activities such as alterations to structures or dwellings that have the potential to adversely affect the built and natural environment. Land Use Plan policy P1-42 specifically requires a site assessment for all new development that expands the footprint or involves a second story addition. P1-44 requires that impacts to trees be avoided by minimizing impacts to the root protection zone identified during the initial site assessment. Thus, Recommended Modification 84 qualifies the list of identified development activities that require a site



assessment to include expansion of the footprint of any structure by 10% or greater or 200 square feet whichever is greater. Site assessment is extended to projects that propose grading of 25 cubic yards or more and any development requiring the removal of trees. These modifications will prevent changes that may result in the loss of residential character or exacerbate erosion and runoff or adversely impact significant trees. Also, since the Design Concept and Final Details review are largely dependent upon an initial site assessment, it will provide both the applicant and the planner(s) with the underlying information necessary to thoughtfully design residences that are compatible with the character of the neighborhood. Please see Recommended Modification 84.

As noted above, the City's design review process for Track Two projects relies primarily on a site assessment to identify the existing characteristics of the site and neighborhood, public way, historic resources, and forest landscape. The Implementation Plan identifies specific criteria for evaluating the forest and trees on a project site as well as the landscaping and design characteristics within the public right-of-ways. And though, the certified LUP (P1-44) requires that a that the site assessment also include investigation of all potential historic resources, the survey criteria for documenting said resources has not been fleshed out. Recommended Modification 85 establishes the criteria for the initial site assessment by planning staff and generally outlines the subsequent steps for notice to the Historic Resources Board and further review and historic determination by a qualified professional. So that the City should not bear the cost of consulting with state-certified qualified professionals, modification 67 also requires applicant's to submit a filing fee adequate to cover the cost of any required historic investigation prepared by a qualified professional.

Recommended Modification 86 provides additional guidance to the Design Review process for project involving historic resources. Any changes to historic resources must be carried out in accordance with the Secretary of Interior Standards for rehabilitation of historic structures. All approved changes must be accompanied by a determination of consistency pursuant to the Historic Preservation Section 17.32.14. Modification 89 is effectively implements similar modifications required by the Historic Preservation element of the Implementation Plan.

The final two recommended modifications are necessary to require mitigation for unavoidable impacts resulting from development and to allow the City to levy fines for failure to comply with conditions of approval projects. Please see Recommended Modification 88.

As submitted, the City's Design Review standards are inadequate to carry out the intent of the certified Land Use Plan. Only as modified can Chapter 17.58: Design Review be found consistent with and adequate to implement the policies of the certified LUP.

## **Carmel Implementation Plan Chapter 17.62 Reclassifications and Amendments**

This chapter establishes a process for review and adoption of the City's General Plan, Zoning Ordinances, Local Coastal Plan, and specific plans, and for the review and adoption of



amendments to said documents. The chapter outlines the steps required to initiate amendments and changes, a brief overview of the evaluation process, and noticing requirements. With respect to amendments to the Local Coastal Program, though LCP amendments are allowed, the ordinance does not provide any guidance/filing requirements for making a formal LCP amendment. The Commission recommends Modification 91 that provides the minimum filing requirements for all LCP amendments to the certified LCP. As modified, Chapter 17.62 is adequate to carry out the intent of the certified land use plan.

### **Carmel Implementation Plan Chapter 17.64 Findings**

This is the section of the Carmel Implementation Plan that describe the contents of required findings for various City actions on permit items (use permits, variances, residential development etc.) With the lone exception for Design Concept approval for proposed residential development that requires a finding that the approval is consistent with the “*coastal Land use plan*”, the various sections do not mention conformance with the certified LCP and as, appropriate, with the Public Access Policies of the Coastal Act as required by CCR 14 13570. Because all of the various developments, for which separate findings are required, must also obtain Coastal Development Permits, deletion of the one, incomplete reference in 17.64.8 A.6 and a modification to add findings for Coastal Development Permits will satisfactorily address this omission. Please see Suggested Modification 92.

This section also includes the required findings to allow adverse changes/impacts to historic resources. Though demolition of historic resources is prohibited (see section 17.30.1), policy P1-104 will allow alterations of historic resources that are not consistent with the Secretary's standards, if it is determined through environmental review that there are no feasible alternatives that are consistent with the Secretary of Interior Standards. As submitted by the City, adverse impacts to historic resource may be permitted if either 1) there are economic, legal, social, technical, or other benefits of the proposed project that outweigh the unavoidable adverse impacts; and 2) there are no feasible alternatives or mitigation measures that will enable the property owner to make a reasonable economic use of or return on the property. The land use plan policies do not identify project benefits or reasonable economic use as factors in determining whether a significant adverse impact to historic resources may be allowed. Thus, the Commission is recommending that it be removed from consideration. See suggested Modification 93.

This section of the ordinance has also been modified through the review of other chapters of the zoning ordinance. For example, the Findings required for the reconstruction of non conforming structure (17.64.13) was modified as part of the analysis of the Chapter on Non Conforming Uses and Structures (17.36).

Finally, a recommended modification was added to include specific finding language required by Land Use Plan policy P1-45 for design study approval. Please see Modification 94.



## **Carmel Implementation Plan Chapter 17.66 Enforcement**

This chapter of the submitted Implementation Plan identifies the City's standards for inspections, nuisance abatement, violations, and revocation of permits. The City reserves the right to make inspections and enforce the provisions of the planning and zoning code including ordering an abatement of public nuisance and hazards. Violations of this title could result in arrest or issuance of a citation for an infraction or misdemeanor. The City also retains the right to hold a public hearing for revocation of any permit. Since it was not explicitly stated, suggested modification 95 allows the City to enforce the provisions of the LCP and the Coastal Act pursuant to the provisions of the Public Resources Code section 30800 – 30822 in addition to all other available remedies. Any person who performs or undertakes development in violation of the LCP or inconsistent with any coastal development permit previously issued may, in addition to any other penalties, be civilly liable in accordance with the provisions of Public Resources Code Section 30820.

## **Carmel Implementation Plan Chapter 17.70 Definitions**

Chapter 17.70 of the City's Implementation Plan is the definitions of terms used throughout the ordinance. Staff has suggested seven modifications to either revise or add terminology that it warrants are necessary to provide clarity in interpreting the standards and ordinances contained herein. Recommended Modification 96 includes new definitions for "coastal plan," "Environmentally Sensitive Habitat Area (ESHA)," and "feasible." These terms are used throughout the ordinance and a definition is needed to provide consistency in their use. The remaining terms, "site coverage," "rebuild," "demolition," and "substantial alteration" are already provided in the definitions but require a measure of revision to bring them in-line with common use and interpretation. For instance, as submitted, decomposed granite was listed under the definition of "permeable" site coverage. After consultation with the Commission's Water Quality unit, it was determined that decomposed granite belonged in the category of materials that are "impermeable." The definition of substantial alteration seemed so broad as to encompass even the smallest visual change or exterior design modification. Furthermore, the definition as provided, conflicted with the definition provided under Alterations, which states that substantial alterations are those alterations for which discretionary approval is required. Thus, the modification suggested by staff adopts this later interpretation, which narrows the scope of substantial alterations to more significant changes while also eliminating the inconsistency between the two definitions.

The Implementation Plan definition of "demolition" represents a significant departure from the definition the Commission has been working under and that which was adopted in Commission's Categorical Exclusion Order E-77-13. In essence, the new definition is the complete obliteration or removal of all above ground materials –a sort of scorched earth approach. This interpretation could lead to the loss of a significant number of historic resources and adversely impact the City's efforts to preserve historic resources and the character of the community. As identified in Land Use Plan policy P1-104, demolition of historic resources are prohibited. Section 17.30 of this ordinance, provides for demolition of historic resources only when required to preserved public health and safety. However, as currently defined, all but one short linear section of wall could be removed and it would not be considered a demolition. Under



the exclusion order (E-77-13), removal or obliteration of 50% or more of a building or structure qualifies as a demolition. Many other localities also define demolition as something less than complete removal or obliteration. Thus, in order to bring the City's ordinance into conformance with the certified land use plan, recommended modification 75 revises the definition of demolition to be the removal of 50% or more of the exterior materials or framing within a 24 month period. It also qualifies that wall segments left which are less than 10 linear feet in length are considered removed as are roof segments measuring less than 100 square feet in area. Only as modified, can the Implementation Plan definitions be found consistent with and adequate to carry out the intent of the certified Land Use Plan.

Similarly, a recommended modification is needed to re-define what is called, "rebuilding." Rebuilding is a euphemistic term that encompasses demolition. As submitted, it is making extensive repairs or modifications (i.e., 50% - 100%) to an existing building or structure and includes "the removal or takedown from any building or structure of 50% or more of both the structural framing and cladding of exterior walls or 50% or more of both the structural framing and covering of the roof." Aside from having the same problems associated with the current proposed definition of demolition, rebuilding has a somewhat altogether different connotation. Whereas demolition implies a *destructive* activity, rebuilding implies a *constructive* activity. The proposed definition of rebuild includes both and is therefore confusing. Thus, in order to clear up the confusion and bring the definition into compliance with the LUP (see demolition discussion above), the recommended modification deletes the reference to removing materials and narrows the scope of rebuild to simply constructive activities. As modified, the definition is adequate to carry out the intent of the certified land use plan.

## **Carmel Implementation Plan Appendix A: Shoreline Management**

Appendix A is the City's Shoreline Management Plan (SMP) and its emergency action response plan. The SMP is a specific plan related to the shoreline, including policies related to hazards, access and recreations, and other coastal resource issue areas associated with western edge of the village, seaward of the first public road. The SMP includes background information on both the natural resources and manmade improvements along the Carmel shoreline in addition to policies designed to manage, maintain, and preserve it for future generations. Though the background data provides an initial assessment of the existing shoreline condition, additional analysis is needed to further identify and understand shoreline processes in the area, and the impacts of the City's ongoing management and maintenance practices. This is particularly true as the SMP relates to the emergency action response plan which appears to pre-authorize development outside the coastal permit process.

For example, the City's Emergency Action Response Plan identifies a number of shoreline activities that typically require coastal development review and approval, which have the potential for significant adverse impacts including introducing additional fill, concrete grout, and boulders to existing vertical seawalls, placement of additional armor-stones to diffuse runoff from storm drain outfalls, and/or construction of revetments.





- *Inspect bluff areas directly below storm drain outfalls for damage (slumping, liquefaction) caused by defective drainpipes.*

**ACTION**

If damage is detected, install armor stone to diffuse drainage and make necessary drain system repairs as soon as practical.

- *Inspect the top and ends of each seawall for signs of erosion at the bluff/wall boundary.*

**ACTION**

When identified, eroded areas should be repaired with fill, concrete grout, boulders, or other appropriate materials complementary to the structure being repaired.

- *Inspect fill areas along the upper shoreline bluff, the tops of masonry walls (10<sup>th</sup>, 13<sup>th</sup>, Santa Lucia to Martin Way) for signs of soil fractures, cracks, developing hollows, or soil subsidence. Monitoring should be performed visually by walking the bluffs above the seawalls and along the Pathway and beach access stairways.*

**ACTION**

If necessary, voids should be filled with additional compacted clean fill material or sand. Slumps should be excavated and an engineered revetment constructed and covered with compacted fill, contoured, and landscaped.

Though the activities contained in the Emergency Action Response Plan may be appropriate in limited circumstances, they nonetheless represent development for which a coastal development permit is required. Furthermore, it is important to note that the majority of the shoreline along Carmel beach and the base of bluffs are located within the Commission's retained permitting jurisdiction. Thus, prior to undertaking these types of activities, a Coastal Development Permit must be obtained from the Commission. To the extent that the envisioned maintenance and repair work lies within the Commission's retained permitting jurisdiction, the standard of review for such projects will be the Coastal Act. As noted above, the ordinance appears to pre-authorize development outside the coastal permitting process. Therefore, modifications are needed to clearly indicate that a CDP is required and to assert permitting jurisdiction for projects located on the beach and the base of the bluff. Please see modifications 98, 99, and 100.

In many respects, the SMP is akin to the City's land use plan document. As noted above, the Shoreline Management Plan provides the broad policy guidance for managing and maintaining the area west of Scenic Road and North San Antonio. The majority of the policies related to shoreline development in the City's land use plan are repeated in the SMP as they apply to public access and recreation, parking, shoreline maintenance and armoring, sand grooming, etc. In that sense, the SMP is a very good document. The shoreline management document, however, does not contain any implementing ordinances that carry out the intent of the broad policy statements.

For instance, the certified land use plan (and SMP) requires a complete and careful evaluation of alternatives when revetments are substantially rebuilt (P5-5) or new shoreline armoring is



contemplated (P5-6). Likewise, LUP policy P5-13 requires retrieval of any rock that migrates from seaward of the as-built revetment or seawall. Though there is broad guidance in the form of policy statements in both the LUP and the Shoreline Management Plan for a wide range of activities, there are no standards in the submitted ordinance implementing these policies. The same is true for submittal of construction and polluted runoff control plans, standards for sand grooming activities, appropriate storm drain maintenance standards, and shoreline armoring maintenance and monitoring standards. As submitted, the Implementation Plan is inadequate to carry out the intent of the certified land use plan / shoreline management plan. Thus, staff is recommending modifications to the ordinances that implement the certified LUP policies. These recommended modifications require the submittal of a shoreline armoring alternatives analysis and construction plan. They require the City to implement best management practices for sand grooming activities, storm drain maintenance, and maintenance of existing shoreline armoring. See modifications 101 - 105.

Beyond the necessary modifications to implement the certified land use plan and shoreline management plan policies listed above, there are numerous other minor modifications that are needed to assure complete consistency with the certified LUP. These include:

- Modifications to the Shoreline Management Plan policies that restate the adopted LUP policies such as the requirement that development not interfere with the public's right to access of the sea, or that bluff protection be permitted only when required to protect existing structures in danger from erosion and finally, that the existing second restroom at Santa Lucia Avenue be retained until a second permanent facility be constructed. The SMP modifications are necessary to be consistent with the certified LUP. See modifications 106 – 108.
- Minor modifications to the background text of the document that accurately defines the habitat values along Carmel Beach. The SMP identifies the North Dunes area as “the only significant native coastal biotic community” along Carmel beach. However, information provided by the City suggests that the mouth of Pescadero Creek also includes significant sensitive habitat including riparian forest and wet meadow along its banks. The recommended modification clarifies the City’s position to state that the North Dunes is “one of the most significant native coastal biotic communities”. See Modification 109.
- A minor modification to eliminate invasive species from the City’s shoreline landscape and approved beach bluff pathway plant palette. Certified LUP policy P5-29 prohibits planting and requires control of spreading of invasive non-native plants. Policy P5-30 requires the City to improve the habitat values for California black legless lizard. Policy P5-28 requires dune habitat to be restored for Tidestrom’ lupine and other native dune plants. The City’s approved plant palette includes myoporum laetum (no common name) which the California Exotic Pest Plant Council has identified as an invasive species. Modification j requires that it be removed from the City’s palette. Cal-EPPC also identifies ice plant and various species of acacia as being invasive. The SMP includes policies that require trimming and control of these species, however this is inadequate to carry out the intent of the certified policies requiring habitat restoration. Modifications 110



- 113 require these species to be removed and replaced with native, non-invasive, drought tolerant species.
- Minor modifications to the background text on shoreline erosion and coastal processes that acknowledges episodic erosion events and the ongoing threat from passive erosion and sea level rise. See Modification 114.
- A minor modification to the SMP background on beach sand and the City's sand grooming activities to implement the land use plan policies which requires the City to investigate options for sand replenishment should it discover through monitoring that the beach is diminishing. Modification 115.
- Minor modifications to require the Commission be noticed when the beach is closed to protect safety, health, and welfare. See modification 116

As modified, the Implementation Plan is adequate to carry out the requirements of the certified land use plan.

## **Carmel Implementation Plan Appendix B: Significant Tree Evaluation Worksheet**

Appendix B is the City's significant tree evaluation worksheet that is used to determine which trees can be considered significant by the City Forester. The City's certified land use plan contains several policies designed to preserve and enhance the predominantly Monterey pine and Coast live oak forest. As noted in the LUP, the forest may be *the* defining element of the City's unique character. Roads wind around it, homes are nestled in it, and everything "Carmel" attains its sense of place from it.

In order to preserve this sense of place, the certified land use plan policies (P1-43, P1-44, P1-45) prohibit the removal of significant native species (Monterey pine, coast live oak, Monterey cypress) as defined by the City Forester, unless it is necessary to prevent a takings of private property or to preserve public health and safety. In the findings above, Chapter 17.48: Trees and Shrubs defined the criteria and standards for removal of significant trees, consistent with the LUP policies, though the issue of tree significance was not addressed. Appendix B: Tree Evaluation Worksheet is used by the City Forester to essentially determine "significance." The worksheet includes a series of questions and scoring criteria to assess significance. This includes an initial judgment about whether the tree is a threat to public safety and health and whether it meets minimum size and species criteria. Assuming a tree is not a threat and is a native species of sufficient size, the forester reviews the tree for more qualitative aspects. Depending upon the scoring, a tree may be classified as significant, moderately significant, or insignificant –the implication being that insignificant trees can be removed without any additional consideration, moderately significant trees can be removed with approval of the Forest and Beach Commission, and significant trees prohibited from removal. Though the approach appears to be reasonable, the scoring and standard for tree significance sets the bar too high. That is, the standard for significance limits attainment to only the best examples of trees. This clearly is not the intent of certified land use plan policies.



There are nearly 60 LUP policies requiring the City to protect, preserve, conserve, avoid disturbance, plant, monitor, and maintain the health of the forest. For example, some of the LUP policies state:

- G5-3 *Protect, conserve and enhance the unique natural beauty and irreplaceable natural resources of Carmel...*
- P5-59 *Avoid encroachment within the root protection zone of significant trees. Removal of significant live Monterey pine trees to facilitate residential development is prohibited unless necessary to provide a reasonable economic use or protect public health and safety.*
- G5-4 *Preserve and enhance the City's legacy of an urbanized forest of predominantly Monterey pine and coast live oak, and Monterey Cypress.*
- P5-61 *Promote natural regeneration of the forest and retention of seedlings by maintaining natural ground surfaces.*
- P5-80 *Plant native Monterey pine seedlings of different genotypes to maximize resistance to diseases and make these seedlings available to the public.*
- P5-64 *New development shall be sited and designed to avoid or minimize significant adverse effects to the forest. Avoid projects that significantly increase building footprint to the detriment of trees. No grading, compaction of soils, construction of building walls or placement of impermeable surfaces within six feet of trees classified as significant shall be permitted.*

Staff has recommended modification 117 that adjusts the scoring criteria for determining tree significance to be more inclusive of existing stock of Monterey pine and coast live oak. This is based on the notion that a living, growing, reproducing tree of native species and minimal size is significant. This is particularly true for a species such as Monterey pine, which are under a tremendous threat from extinction due to a reduction in habitat, disease, and limited genetic diversity. Lowering the scale for determining significance is also consistent with the intent of the certified land use plan policies.

